FILE COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1959

No. 165

THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS, ET AL., PETITIONERS,

vs.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 1, 1959
CERTIORARI GRANTED OCTOBER 12, 1959

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

No. 165

THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS, ET AL., PETITIONERS,

vs.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

INDEX

	Original	Print
Proceedings in U.S.C.A. for the Fifth Circuit		
Caption (omitted in printing)	1	1
Record from the U.S.D.C. for the Northern District of Texas, Dallas Division	2	2
Complaint	2	2
Temporary restraining order dated November 6, 1958	23	26
Temporary restraining order bond and power of attorney (omitted in printing)	29	32
Motion to dismiss temporary restraining order and complaint	35	32
Order extending temporary restraining order entered November 7, 1958	38	34
Stipulation extending temporary restraining order, bond and resetting cause	40	35
Order extending temporary restraining order, bond and resetting cause, November 11, 1958	41	36

RECORD PRESS, PRINTERS, NEW YORK, N. Y., FEBRUARY 11, 1960

	Original	Print
Record from the U.S.D.C. for the Northern District of Texas, Dallas Division—Continued		
Defendants' answer	42	37
Stipulation re extending time to file briefs	46	41
Order extending time to file briefs	47	42
Motion for order permitting plaintiffs to amend and supplement complaint	54	42
Amendment to motion for order permitting plaintiffs to amend and supplement complaint	58	44
Order granting plaintiffs leave to amend and supplement complaint	62	46
Amendment and supplement to complaint	63	47
Affidavit of A. F. Winkel	74	58
Exhibits	90	79
No. 1—The Katy Railroad Map, showing Missouri-Kansas-Texas Lines, December, 1958	90	79
Nos. 2 & 3—General Orders Nos. 119 & 120 of Missouri-Kansas-Texas Railroad Company of Texas, dated October 2, 1958	91	80
No. 4—Letter from C. L. Flanery to A. F. Winkel, dated March 1, 1954	93	82
No. 5—Letter from A. F. Winkel to W. D. Johnson and C. L. Flanery, dated March 4, 1954	94	83
No. 6—Letter from A. F. Winkel to W. D. Johnson and C. L. Flanery, dated September 17, 1954	95	84
No. 7—Letter from C. L. Flanery to A. F. Winkel, dated November 15, 1954	96	85
No. 8—Letter from W. D. Johnson to A. F. Winkel, dated November 16, 1954	97	86
No. 9—Letter from W. D. Johnson to A. F. Winkel, dated December 29, 1954	98	87
Order continuing cause, dated December 18, 1958	102	90
Notice of appeal of Missouri-Kansas-Texas Railroad Company, et al.	104	92
Cost bond and power of attorney (omitted in printing)	106	94
Motion for stay order	112	94

	Original	Print
Record from the U.S.D.C. for the Northern District of Texas, Dallas Division—Continued		
Amendment and supplement to motion for stay order	115	97
Motion for the entry of the herewith tendered order	134	99
Proposed order denying plaintiffs' motion for an order staying the enforcement of the preliminary mandatory injunction, etc.	135	100
Order denying motion for stay order as amended	136	101
Notice of appeal of Missouri-Kansas-Texas Railroad Company, et al.	140	104
Cost bond and power of attorney (omitted in printing)	143	107
Notice of appeal of Brotherhood of Locomotive Engineers, et al.	149	108
Cost bond and power of attorney (omitted in printing)	154	112
Designation of contents of record	160	112
Counter-designation of additional portion of record on appeal	163	115
Clerk's certificate (omitted in printing)	165	115
Exhibits to amendment and supplement to complaint	167	116
A—Submission by Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas to National Railroad Adjustment Board, First Division with The Brotherhood of Locomotive Engineers, The Brotherhood of Locomotive Firemen and Enginemen, The Brotherhood of Railroad Trainmen, and The Order of Railway Conductors and Brakemen, dated December 10, 1958	167	116
Exhibits	195	147
Nos. 1 & 2—General Orders Nos. 119 & 120 of Missouri-Kansas-Texas Railroad Company of Texas, dated October 2, 1958 (copies) (omitted in printing)	195	147

	Original	Print
Record from the U.S.D.C. for the Northern District of Texas, Dallas Division—Continued		
Exhibits to amendment and supplement to complaint—Continued		
A—Submission by Missouri-Kansas-Texas Railroad Company, etc.—Continued		
Exhibits—Continued		
No. 3—Letter from C. L. Flanery to A. F. Winkel, dated March 1, 1954 (copy) (omitted in printing)	197	147
No. 4—Letter from A. F. Winkel to W. D. Johnson and C. L. Flanery, dated March 4, 1954 (copy) (omitted in printing)	198	147
No. 5—Letter from A. F. Winkel to W. D. Johnson and C. L. Flanery, dated September 17, 1954 (copy) (omitted in printing)	199	147
No. 6—Letter from C. L. Flanery to A. F. Winkel, dated November 15, 1954 (copy) (omitted in printing)	200	147
No. 7—Letter from W. D. Johnson to A. F. Winkel, dated November 16, 1954 (copy) (omitted in printing)	201	147
No. 8—Letter from W. D. Johnson to A. F. Winkel, dated December 29, 1954 (copy) (omitted in printing)	202	147
No. 9—National Agreement May 23, 1952 (The Order of Railway Conductors) Article 6	205	148
No. 10—National Agreement May 23, 1952 (The Brotherhood of Locomotive Engineers) Article 4	206	149
No. 11—National Agreement May 23, 1952 (The Brotherhood of Locomotive Firemen and Enginemen) Article 4	207	151
No. 12—Case EFCT-2-SE decision dated March 6, 1958	208	153
No. 13—Case BLE-9W, BLF & E-13-W, ORC&B-10-W, BRT-51-W decision dated March 6, 1958	209	155

	Original	Print
Record from the U.S.D.C. for the Northern District of Texas, Dallas Division—Continued		
Exhibits to amendment and supplement to complaint—Continued		
A—Submission by Missouri-Kansas-Texas Railroad Company, etc.—Continued		
Exhibits—Continued		
No. 14—Case BLE-12-W decision dated October 21, 1958	211	157
No. 15—Case BRT-57-W decision dated November 5, 1958	212	159
No. 16—Mediation Agreement Case No. A-5241 (The Brotherhood of Locomotive Firemen and Enginemen) Article VIII	213	160
No. 17—Mediation Agreement Case No. A-5248, April 5, 1957 (The Brotherhood of Railroad Trainmen) Article VIII	214	161
No. 18—Mediation Agreement Case No. A-5294, June 12, 1957 (The Order of Railway Conductors and Brakemen) Article V	216	164
No. 19—Mediation Agreement Case No. A-5464, July 18, 1957 (The Brotherhood of Locomotive Engineers) Article VIII	218	167
B—Submission by Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas to National Committee created by Article 4 of the National Agreement dated May 23, 1952 with The Brotherhood of Locomotive Engineers, dated December 10, 1958	219	169
Exhibits	234	175
Nos. 1 & 2—General Orders Nos. 119 & 120 of Missouri-Kansas-Texas Railroad Company of Texas, dated October 2, 1958 (copies) (omitted in printing)	234	175
No. 3—Case EFCT-2-SE decision dated March 6, 1958 (copy) (omitted in printing)	236	175

	Original	Print
Record from the U.S.D.C. for the Northern District of Texas, Dallas Division—Continued		
Exhibits to amendment and supplement to complaint—Continued		
B—Submission by Missouri-Kansas-Texas Railroad Company, etc.—Continued		
Exhibits—Continued		
No. 4—Case BLE-9-W, BLF&E-13-W, ORC&B-10-W, BRT-51-W decision dated March 6, 1958 (copy) (omitted in printing)	237	175
No. 5—Case BLE-12W decision dated October 21, 1958 (copy) (omitted in printing)	239	175
No. 6—Case BRT-57-W decision dated November 5, 1958 (copy) (omitted in printing)	240	175
C—Submission by Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas to National Committee created by Article 4 of the National Agreement dated May 23, 1952 with The Brotherhood of Locomotive Firemen and Enginemen, dated December 10, 1958	241	176
Exhibits	256	182
Nos. 1 & 2—General Orders Nos. 119 & 120 of Missouri-Kansas-Texas Railroad Company, dated October 2, 1958 (copies) (omitted in printing)	256	182
No. 3—Case EFCT-2-SE decision dated March 6, 1958 (copy) (omitted in printing)	258	182
No. 4—Case BLE-9W, BLF & E-13-W, ORC&B-10-W, BRT-51-W decision dated March 6, 1958 (copy) (omitted in printing)	259	182
No. 5—Case BLE-12-W decision dated October 21, 1958 (copy) (omitted in printing)	261	182
No. 6—Case BRT-57-W decision dated November 5, 1958 (copy) (omitted in printing)	262	182

	Original	Print
Record from the U.S.D.C. for the Northern District of Texas, Dallas Division—Continued		
Exhibits to amendment and supplement to complaint—Continued		
D—Submission by Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas to National Committee created by Article 6 of National Agreement dated May 23, 1952 with The Order of Railway Conductors and Brakemen, dated December 10, 1958	263	183
Exhibits	281	191
Nos. 1 & 2—General Orders Nos. 119 & 120 of Missouri-Kansas-Texas Railroad Company of Texas, dated October 2, 1958 (copies) (omitted in printing)	281	191
No. 3—Letter from C. L. Flanery to A. F. Winkel, dated March 1, 1954 (copy) (omitted in printing)	283	191
No. 4—Letter from A. F. Winkel to W. D. Johnson and C. L. Flanery, dated March 4, 1954 (copy) (omitted in printing)	284	191
No. 5—Letter from A. F. Winkel to W. D. Johnson and C. L. Flanery, dated September 17, 1954 (copy) (omitted in printing)	285	192
No. 6—Letter from C. L. Flanery to A. F. Winkel, dated November 15, 1954 (copy) (omitted in printing)	286	192
No. 7—Letter from W. D. Johnson to A. F. Winkel, dated November 16, 1954	287	192
No. 8—Letter from W. D. Johnson to A. F. Winkel, dated December 29, 1954	288	192
No. 9—Case EFCT-2-SE decision dated March 6, 1958 (copy) (omitted in printing)	291	192
No. 10—Case BLE-9W, BLF & E-13-W, ORC&B-10-W, BRT-51-W decision dated March 6, 1958 (copy) (omitted in printing)	292	192

	Original	Print
Record from the U.S.D.C. for the Northern District of Texas, Dallas Division—Continued		
Exhibits to amendment and supplement to complaint—Continued		
D—Submission by Missouri-Kansas-Texas Railroad Company, etc.—Continued		
Exhibits—Continued		
No. 11—Case BLE-12-W decision dated October 21, 1958 (copy) (omitted in printing)	294	193
No. 12—Case BRT-57-W decision dated November 5, 1958 (copy) (omitted in printing)	295	193
E—Submission by Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas to Disputes Committee Created by Article X of Mediation Agreement Case No. A-5241 dated November 20, 1956 with The Brotherhood of Locomotive Firemen and Enginemen, dated December 10, 1958	298	193
Exhibits	308	199
Nos. 1 & 2—General Orders Nos. 119 & 120 of Missouri-Kansas-Texas Railroad Company of Texas, dated October 2, 1958 (copies) (omitted in printing)	308	199
F—Submission by Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas to Disputes Committee Created by Article X of Mediation Agreement Case No. A-5248 dated April 5, 1957 with The Brotherhood of Railroad Trainmen dated December 10, 1958	310	199
Exhibits	322	205
Nos. 1 & 2—General Orders Nos. 119 & 120 of Missouri-Kansas-Texas Railroad Company of Texas, dated October 2, 1958 (copies) (omitted in printing)	322	205

	Original	Pri
Record from the U.S.D.C. for the Northern District of Texas, Dallas Divisio:—Continued		
Exhibits to amendment and supplement to complaint—Continued		
G—Submission by Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas to Disputes Committee Created by Article X of Mediation Agreement Case No. A-5464 dated July 18, 1957 with The Brotherhood of Locomotive Engineers dated December 10, 1958	324	2(
Exhibits	336	21
Nos. 1 & 2—General Orders Nos. 119 & 120 of Missouri-Kansas-Texas Railroad Company of Texas, dated October 2, 1958 (copies) (omitted in printing)	336	21
H—Submission by Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas to Disputes Committee Created by Article VII of Mediation Agreement Case No. A-5294 dated June 12, 1957 with The Order of Railway Conductors and Brakemen dated December 10, 1958	338	21
Exhibits	350	21
Nos. 1 & 2—General Orders Nos. 119 & 120 of Missouri-Kansas-Texas Railroad Company of Texas, dated October 2, 1958 (copies) (omitted in printing)	350	21
I—Submission by Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas to National Mediation Board with The Brotherhood of Locomotive Engineers, The Brotherhood of Locomotive Firemen and Enginemen, The Brotherhood of Railroad Trainmen, and The Order of Railway Conductors and Brakemen dated December 16, 1958	352	21
Exhibits	372	22

	Original	Print
Record from the U.S.D.C. for the Northern District of Texas, Dallas Division—Continued		
Exhibits to amendment and supplement to complaint—Continued		
I—Submission by Missouri-Kansas-Texas Railroad Company, etc.—Continued		
Exhibits—Continued		
Nos. 1 & 2—General Orders Nos. 119 & 120 of Missouri-Kansas-Texas Railroad Company of Texas, dated October 2, 1958 (copies) (omitted in printing)	372	225
No. 3—Mediation Agreement Case No. A-5241 (The Brotherhood of Locomotive Firemen and Enginemen) Article VIII (copy) (omitted in printing)	374	225
No. 4—Mediation Agreement Case No. A-5248, April 5, 1957 (The Brotherhood of Railroad Trainmen) Article VIII (copy) (omitted in printing)	375	225
No. 5—Mediation Agreement Case No. A-5464, July 18, 1957 (The Brotherhood of Locomotive Engineers) Article VIII (copy) (omitted in printing)	377	225
No. 6—Mediation Agreement Case No. A-5294, June 12, 1957 (The Order of Railway Conductors and Brakemen) Article V (copy) (omitted in printing)	378	226
J—Submission by Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas to National Mediation Board with The Brotherhood of Locomotive Engineers, The Order of Railway Conductors and Brakemen, and The Brotherhood of Locomotive Firemen and Enginemen dated December 16, 1958	380	226
Exhibits	409	239
Nos. 1 & 2—General Orders Nos. 119 & 120 of Missouri-Kansas-Texas Railroad Company of Texas, dated October 2, 1958 (copies) (omitted in printing)	409	239

	Original	Print
Record from the U.S.D.C. for the Northern District of Texas, Dallas Division—Continued		
Exhibits to amendment and supplement to complaint—Continued		
J—Submission by Missouri-Kansas-Texas Railroad Company, etc.—Continued		
Exhibits—Continued		
No. 3—Letter from C. L. Flanery to A. F. Winkel, dated March 1, 1954 (copy) (omitted in printing)	411	239
No. 4—Letter from A. F. Winkel to W. D. Johnson and C. L. Flanery, dated March 4, 1954 (copy) (omitted in printing)	412	239
No. 5—Letter from A. F. Winkel to W. D. Johnson and C. L. Flanery, dated September 17, 1954 (copy) (omitted in printing)	413	239
No. 6—Letter from C. L. Flanery to A. F. Winkel, dated November 15, 1954 (copy) (omitted in printing)	414	239
No. 7—Letter from W. D. Johnson to A. F. Winkel, dated November 16, 1954 (copy) (omitted in printing)	415	239
No. 8—Letter from W. D. Johnson to A.F. Winkel, dated December 29, 1954 (copy) (omitted in printing)	416	239
No. 9—National Agreement May 23, 1952 (The Order of Railway Conductors) Article 6 (copy) (omitted in printing)	419	240
No. 10—National Agreement May 23, 1952 (The Brotherhood of Locomotive Engineers) Article 4 (copy) (omitted in printing)	420	240
No. 11—National Agreement May 23, 1952 (The Brotherhood of Locomotive Firemen and Enginemen) Article 4 (copy) (omitted in printing)	421	240
No. 12—Case EFCT-2-SE decision dated March 6, 1958 (copy) (omitted in printing)	422	240

	Original	Print
Record from the U.S.D.C. for the Northern District of Texas, Dallas Division—Continued		
Exhibits to amendment and supplement to complaint—Continued		
J—Submission by Missouri-Kansas-Texas Railroad Company, etc.—Continued		
Exhibits—Continued		
No. 13—Case BLE-9W, BLF & E-13-W, ORC&B-10-W, BRT-51-W decision dated March 6, 1958 (copy) (omitted in printing)	423	240
No. 14—Case BLE-12-W decision dated October 21, 1958 (copy) (omitted in printing)	425	240
No. 15—Case BRT-57-W decision dated November 5, 1958 (copy) (omitted in printing)	426	240
Clerk's certificate (omitted in printing)	427	240
Transcript of hearing of November 7, 1958	431	241
Appearances	431	241
Colloquy	432	241
Argument on behalf of defendants by Mr. Willis, Jr.	433	242
Argument on behalf of plaintiffs by Mr. Clinton	445	250
Statement by the court	456	257
Reporter's certificate (omitted in printing)	472	267
Transcript of hearing of December 18, 1958	473	268
Appearances	473	268
Colloquy between court and counsel	474	268
Statement on behalf of plaintiffs by Mr. Clinton	475	269
Motion to dismiss the complaint and the dissolution of the temporary restraining order, etc.	482	274
Statement by the court	486	277
Colloquy between court and counsel for defendant, Mr. Fonville	489	279
Statement on behalf of plaintiffs by Mr. Clinton	495	282
Statement on behalf of defendant by Mr. Fonville	502	286

	Original	Print
Record from the U.S.D.C. for the Northern District of Texas, Dallas Division—Continued		
Transcript of hearing of December 18, 1958—Continued		
Reply statement on behalf of plaintiffs by Mr. Clinton	507	290
Colloquy between court and counsel	515	294
Reporter's certificate (omitted in printing)	529	303
Transcript of hearing of January 5, 1959 on motion of the plaintiffs to stay the injunction	530	303
Reading of brief by Mr. Touchstone	532	304
Statement on behalf of defendant by Mr. Fonville	545	312
Statement by the court	530	315
Reporter's certificate (omitted in printing)	558	320
Transcript of hearing of January 13, 1959	559	320
Colloquy between court and counsel	560	320
Oral ruling by the court	567	325
Reporter's certificate (omitted in printing)	576	330
Clerk's certificate (omitted in printing)	577	330
Motion for stay order filed January 6, 1959	578	331
Exhibits	598	355
No. 1—Order continuing cause dated December 18, 1958	598	355
No. 2—The Katy Railroad Map, showing Missouri-Kansas-Texas Lines, with line of RR between Wichita Falls & Forgan marked in December, 1958	599	359
Nos. 3 & 4—General Orders Nos. 119 & 120 of Missouri-Kansas-Texas Railroad Company of Texas, dated October 2, 1958 (copies) (omitted in printing)	600	360
No. 5—Letter from C. L. Flanery to A. F. Winkel, dated March 1, 1954 (copy) (omitted in printing)	602	360
No. 6—Letter from A. F. Winkel to W. D. Johnson and C. L. Flanery, dated March 4, 1954 (copy) (omitted in printing)	603	360

	Original	Print
Motion for stay order filed January 6, 1959—Continued		
Exhibits—Continued		
No. 7—Letter from A. F. Winkel to W. D. Johnson and C. L. Flanery, dated September 17, 1954 (copy) (omitted in printing)	604	360
No. 8—Letter from C. L. Flanery to A. F. Winkel, dated November 15, 1954 (copy) (omitted in printing)	605	360
No. 9—Letter from W. D. Johnson to A. F. Winkel, dated November 16, 1954 (copy) (omitted in printing)	606	360
No. 10—Letter from W. D. Johnson to A. F. Winkel, dated December 29, 1954 (copy) (omitted in printing)	607	360
Affidavit of A. F. Winkel filed January 6, 1959	610	361
Affidavit of M. E. Clinton filed January 6, 1959	611	362
Affidavit of M. E. Clinton as to filing notice of appeal	612	363
Exhibit A—Notice of appeal	613	364
Stay order dated January 6, 1959	615	366
Supersedeas bond and power of attorney (omitted in printing)	617	368
Minute entry of argument and submission (omitted in printing)	623	368
Opinion, Rives, J.	624	369
Judgment	636	377
Motion for stay of mandate	637	378
Order staying mandate	640	379
Clerk's certificate (omitted in printing)	641	379
Order allowing certiorari	642	380
Order re parts of record to be printed	643	381

[fol. C]

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 8061 Civil

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, et al.,

versus

THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS, et al.

AN APPEAL FROM THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

W. A. Thie, M. E. Clinton, M. W. Reeves, Barrett Building, Denison, Texas;

O. O. Touchstone, 405 Southland Life Building, Dallas, Texas;

Attorneys for Plaintiffs.

Harold C. Heiss, Keith Building, Cleveland 15, Ohio;

V. C. Shuttleworth, 1120 Merchants National Bank Bldg., Cedar Rapids, Iowa;

Harold N. McLaughlin, c/o Hornbeck, Ritter & Victory, 1706 Union Commerce Building, Cleveland 13, Ohio;

Willis & Willis, 1408 Tower Petroleum Building, Dallas, Texas;

William P. Fonville, 2232 Republic National Bank Bldg., Dallas, Texas;

Attorneys for Defendants.

[fol. 1] [Caption omitted]

[fol. 2]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

Civil Action No. 8061

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, et al.,
Plaintiffs

vs.

THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS, et al.,
Defendants

COMPLAINT--Filed November 6, 1958

Come now Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, plaintiffs, complaining of the defendants hereinafter named, and for cause of action respectfully show:

I

(a) Plaintiff Missouri-Kansas-Texas Railroad Company, hereinafter sometimes called "Missouri Company", is a corporation organized and existing under and by virtue of the laws of the State of Missouri with its principal office and place of business in the City of St. Louis, Missouri. Said Company owns and operates lines of railroad in interstate commerce and in intrastate commerce in the States of Missouri, Kansas, and Oklahoma.

(b) Plaintiff Missouri-Kansas-Texas Railroad Company of Texas, hereinafter sometimes called "Texas Company", is a corporation organized and existing under and by virtue of the laws of the State of Texas with its principal office and place of business in the City of Dallas, Dallas County, Texas. Said Company owns and operates lines of railroads in interstate commerce and in intrastate commerce in the State of Texas.

(c) The main line tracks of Missouri Company extend from St. Louis, Missouri, and Kansas City, Missouri, through Parsons, Kansas, and Muskogee, Oklahoma, to the center of the railroad bridge over Red River, a boundary between the States of Oklahoma and Texas, about four miles north of Denison, Texas, with a secondary main line track extending from Parsons, Kansas, to Oklahoma City, Oklahoma.

[fol. 3] (d) The main line tracks of Texas Company extend from the center of said railroad bridge over Red River, through Denison, Dallas, Fort Worth, Waco, Austin, and Smithville, to San Antonio and Houston, Texas.

(e) Missouri Company and Texas Company own and operate numerous branch lines of railroad, including a branch line extending from Wichita Falls, Texas, to Forgan, Oklahoma, a distance of 302 miles, which is the Western Subdivision of the Southern Division of plaintiffs' lines and to which further reference will be made. Texas Company owns and operates that portion of said branch line extending from Wichita Falls to the center of the railroad bridge over Red River, a boundary between the States of Texas and Oklahoma, about eighteen miles northwest of Wichita Falls, and Missouri Company owns and operates that portion of said branch line extending from the center of said bridge over Red River, through Altus, Elk City, and Woodward, to Forgan, Oklahoma.

II

(a) Defendant The Brotherhood of Locomotive Engineers is an unincorporated association, and a labor organization under the Railway Labor Act, certified and recognized as the collective bargaining agent under that Act for all of plaintiffs' employees classified as engineers, and in that capacity said Brotherhood is a party to the current agreements with plaintiffs governing the wages and working conditions of plaintiffs' engineers as a class. Said Brotherhood consists of a general lodge and many subordinate local lodges located on the lines of railroad operated by plaintiffs and at numerous other places through-

out the United States. Said Brotherhood's principal office and place of business is in Cleveland, Ohio, but it has an office and place of business in Houston, Harris County, Texas. Said Brotherhood is sued in its common name and as representative of plaintiffs' engineers as a class who have a joint and common interest in this action and who are so numerous as to make it impracticable to bring them all before the Court.

(b) Defendant Division No. 177 of The Brotherhood of Locomotive Engineers, at Denison, in Grayson County, Texas, is an unincorporated association and a subordinate and affiliated local lodge of said Brotherhood. It is sued in its common name, as representative of its members who have a joint and common interest in this action and who are so numerous as to make it impracticable to bring them all before the Court, and as representative of plaintiffs' engineers as a class.

[fol. 4] (c) Defendant Division No. 568 of The Brotherhood of Locomotive Engineers, at Denison, in Grayson County, Texas, is an unincorporated association and a subordinate and affiliated local lodge of said Brotherhood. It is sued in its common name, as representative of its members who have a joint and common interest in this action and who are so numerous as to make it impracticable to bring them all before the Court, and as representative of plaintiffs' engineers as a class.

(d) Defendant Division No. 736 of The Brotherhood of Locomotive Engineers, at Wichita Falls, in Wichita County, Texas, is an unincorporated association and a subordinate and affiliated local lodge of said Brotherhood. It is sued in its common name, as representative of its members who have a joint and common interest in this action and who are so numerous as to make it impracticable to bring them all before the Court, and as representative of plaintiffs' engineers as a class.

(e) Defendant H. C. Hobart is a resident and citizen of Harris County, Texas, and is sued individually, as Assistant Grand Chief Engineer of The Brotherhood of Locomotive Engineers, and as representative of plaintiffs' engineers as a class.

(f) Defendant M. F. Ricter is a resident and citizen of Bastrop County, Texas, and is sued individually, as Vice Chairman of The Brotherhood of Locomotive Engineers on the lines of railroad operated by plaintiffs, and as representative of plaintiffs' engineers as a class.

(g) Defendant R. McDaniel is a resident and citizen of Grayson County, Texas, and is sued individually, as Local Chairman of Division No. 177 of The Brotherhood of Locomotive Engineers, as representative of the members of Division No. 177, and as representative of plaintiffs' engineers as a class.

(h) Defendant W. M. Kelly is a resident and citizen of Grayson County, Texas, and is sued individually, as Chief Engineer of Division No. 177 of The Brotherhood of Locomotive Engineers, as representative of the members of Division No. 177, and as representative of plaintiffs' engineers as a class.

(i) Defendant J. H. Williams is a resident and citizen of Grayson County, Texas, and is sued individually, as Local Chairman of Division No. 568 of The Brotherhood of Locomotive Engineers, as representative of the mem-
[fol. 5] bers of Division No. 568, and as representative of plaintiffs' engineers as a class.

(j) Defendant J. L. Scott is a resident and citizen of Grayson County, Texas, and is sued individually, as Chief Engineer of Division No. 568 of The Brotherhood of Locomotive Engineers, as representative of the members of Division No. 568, and as representative of plaintiffs' engineers as a class.

(k) Defendant A. M. Hanks is a resident and citizen of Wichita County, Texas, and is sued individually, as President of Division No. 736 of The Brotherhood of Locomotive Engineers, as representative of the members of Division No. 736, and as representative of plaintiffs' engineers as a class.

(l) Defendant A. B. Peterson is a resident and citizen of Wichita County, Texas, and is sued individually, as Local Chairman of Division No. 736 of The Brotherhood

of Locomotive Engineers, as representative of the members of Division No. 736, and as representative of plaintiffs' engineers as a class.

(m) Defendant R. W. Wilson is a resident and citizen of Wichita County, Texas, and is sued individually, as Secretary of Division No. 736 of The Brotherhood of Locomotive Engineers, as representative of the members of Division No. 736, and as representative of plaintiffs' engineers as a class.

(n) Defendants W. T. Lowery, J. W. Reece, W. M. Young, H. N. Brown, E. D. Bunt, Jr., and D. D. Booten, are residents and citizens of Tarrant County, Texas, are engineers for plaintiff Texas Company, and are sued individually and as representatives of plaintiffs' engineers as a class.

(o) Defendants A. C. Bills, F. A. Ramsey, C. E. Lievsay, C. W. Redmon, W. A. Newcomb, R. S. Bradshaw, H. E. Oldham, C. H. Preston, and F. N. Weems, are residents and citizens of Dallas County, Texas, are engineers for plaintiff Texas Company, and are sued individually and as representatives of plaintiffs' engineers as a class.

(p) Defendants J. C. Fielder, L. S. Evans, R. D. Pearson, F. Douglas, W. J. Seabaugh, R. P. Cullar, C. L. Cline, J. T. Huseman, J. L. Scott, P. W. Ashburn, C. R. Hauschild, and R. M. Clift, are residents and citizens of Grayson County, Texas, are engineers for plaintiff Missouri Company, and are sued individually and as representatives of plaintiffs' engineers as a class.

[fol. 6] (q) Defendants H. O. Bilderback, W. F. Mathis, W. L. Trammell, S. H. Squires, R. F. Brown, G. H. Butcher, F. Johnson, T. E. Penn, W. M. Kelly, C. H. Wade, W. A. Fowler, and A. G. Malear, are residents and citizens of Grayson County, Texas, are engineers for plaintiff Texas Company, and are sued individually and as representatives of plaintiffs' engineers as a class.

(r) Defendants L. C. Rodgers, C. E. Greenwood, A. R. Ashley, and A. B. Peterson, are residents and citizens of Wichita County, Texas, are engineers for plaintiffs Mis-

souri Company and Texas Company, and are sued individually and as representatives of plaintiffs' engineers as a class.

III

(a) Defendant The Brotherhood of Locomotive Firemen and Enginemen is an unincorporated association, and a labor organization under the Railway Labor Act, certified and recognized as the collective bargaining agent under that Act for all of plaintiffs' employees classified as firemen, and in that capacity said Brotherhood is a party to the current agreements with plaintiffs governing the wages and working conditions of plaintiffs' firemen as a class. Said Brotherhood consists of a general lodge and many subordinate local lodges located on the lines of railroad operated by plaintiffs and at numerous other places throughout the United States. Said Brotherhood's principal office and place of business is in Cleveland, Ohio, but it has an office and place of business in Houston, Harris County, Texas. Said Brotherhood is sued in its common name and as representative of plaintiffs' firemen as a class who have a joint and common interest in this action and who are so numerous as to make it impracticable to bring them all before the Court.

(b) Defendant Local Lodge No. 8 of The Brotherhood of Locomotive Firemen and Enginemen at Denison in Grayson County, Texas, is an unincorporated association and a subordinate and affiliated local lodge of said Brotherhood. It is sued in its common name, as representative of its members who have a joint and common interest in this action and who are so numerous as to make it impracticable to bring them all before the Court, and as representative of plaintiffs' firemen as a class.

(c) Defendant Local Lodge No. 632 of The Brotherhood of Locomotive Firemen and Enginemen at Wichita Falls in Wichita County, Texas, is an unincorporated association and a subordinate and affiliated local lodge of said Broth-
[fol. 7] erhood. It is sued in its common name, as representative of its members who have a joint and common interest in this action and who are so numerous as to

make it impracticable to bring them all before the Court, and as representative of plaintiffs' firemen as a class.

(d) Defendant Local Lodge No. 776 of The Brotherhood of Locomotive Firemen and Enginemen at Denison in Grayson County, Texas, is an unincorporated association and a subordinate and affiliated local lodge of said Brotherhood. It is sued in its common name, as representative of its members who have a joint and common interest in this action and who are so numerous as to make it impracticable to bring them all before the Court, and as representative of plaintiffs' firemen as a class.

(e) Defendant R. G. Rogerson is a resident and citizen of Harris County, Texas, and is sued individually, as Vice President of The Brotherhood of Locomotive Firemen and Enginemen, and as representative of plaintiffs' firemen as a class.

(f) Defendant R. M. Brady is a resident and citizen of Grayson County, Texas, and is sued individually, as General Chairman of The Brotherhood of Locomotive Firemen and Enginemen on the lines of railroad operated by plaintiffs, and as representative of plaintiffs' firemen as a class.

(g) Defendant L. J. Derichsweiler is a resident and citizen of Grayson County, Texas, and is sued individually, as Second Vice Chairman of the Brotherhood of Locomotive Firemen and Enginemen on the lines of railroad operated by plaintiffs, as Local Chairman of Local Lodge No. 776 of said Brotherhood, as representative of the members of Local Lodge No. 776, and as representative of plaintiffs' firemen as a class.

(h) Defendant O. W. Wells is a resident and citizen of Grayson County, Texas, and is sued individually, as Secretary-Treasurer of the Brotherhood of Locomotive Firemen and Enginemen, as Local Chairman of Local Lodge No. 8 of said Brotherhood, as representative of the members of Local Lodge No. 8, and as representative of plaintiffs' firemen as a class.

(i) Defendant H. L. Duncan is a citizen and resident of Grayson County, Texas, and is sued individually, as Presi-

dent of Local Lodge No. 8 of The Brotherhood of Locomotive Firemen and Enginemen, as representative of the [fol. 8] members of Local Lodge No. 8, and as representative of plaintiffs' firemen as a class.

(j) Defendant C. R. Gullahorn is a citizen and resident of Wichita County, Texas, and is sued individually, as President of Local Lodge No. 632 of The Brotherhood of Locomotive Firemen and Enginemen, as representative of the members of Local Lodge No. 632, and as representative of plaintiffs' firemen as a class.

(k) Defendant G. W. Nelson is a resident and citizen of Wichita County, Texas, and is sued individually, as Local Chairman of Local Lodge No. 632 of The Brotherhood of Locomotive Firemen and Enginemen, as representative of the members of Local Lodge No. 632, and as representative of plaintiffs' firemen as a class.

(l) Defendant C. L. Hamrick is a citizen and resident of Wichita County, Texas, and is sued individually, as Secretary of Local Lodge No. 632 of The Brotherhood of Locomotive Firemen and Enginemen, as representative of the members of Local Lodge No. 632, and as representative of plaintiffs' firemen as a class.

(m) Defendant H. L. Ditto is a citizen and resident of Grayson County, Texas, and is sued individually, as President of Local Lodge No. 776 of The Brotherhood of Locomotive Firemen and Enginemen, as representative of the members of Local Lodge No. 776, and as representative of plaintiffs' firemen as a class.

(n) Defendants W. G. Anderson and E. P. Pattison are residents and citizens of Tarrant County, Texas, are firemen for plaintiff Texas Company, and are sued individually and as representatives of plaintiffs' firemen as a class.

(o) Defendants C. P. Brown, D. W. Bunch, J. C. Coker, R. J. Corcoran, B. T. Crosskno, R. L. Davault, R. B. Davis, S. E. Hall, H. W. Kellum, D. D. Kent, J. E. McClain, M. L. McKamy, and T. M. Miller, are residents and citizens of Dallas County, Texas, are firemen for plaintiff Texas

Company, and are sued individually and as representatives of plaintiffs' firemen as a class.

[fol. 9] (p) Defendants G. M. Setzer, F. I. Roth, E. L. Wood, H. A. Shoemaker, J. T. Barnhill, R. F. Williams, Glenn Flaherty, R. C. Koiner, R. W. Scoggins, W. R. Byrd, C. H. Browder, and R. M. Boyd, are residents and citizens of Grayson County, Texas, are firemen for plaintiff Missouri Company, and are sued individually and as representatives of plaintiffs' firemen as a class.

(q) Defendants B. F. Blanton, T. B. Nelson, Jr., J. L. Wineinger, W. H. Dobbins, R. E. Morrison, Otto Mund, Jr., B. A. Preston, H. M. Tomlinson, W. T. Walker, A. H. Eakin, C. W. Tignor, J. W. Kennedy, and C. S. Taylor, are residents and citizens of Grayson County, Texas, are firemen for plaintiff Texas Company, and are sued individually and as representatives of plaintiffs' firemen as a class.

(r) Defendants L. T. Silk, G. W. Nelson, and D. L. Windsor, are residents and citizens of Wichita County, Texas, are firemen for plaintiffs Missouri Company and Texas Company, and are sued individually and as representatives of plaintiffs' firemen as a class.

IV

(a) Defendant The Brotherhood of Railroad Trainmen is an unincorporated association, and a labor organization under the Railway Labor Act, certified and recognized as the collective bargaining agent under that Act for all of plaintiffs' employees classified as brakemen and switchmen, and in those capacities said Brotherhood is a party to the current agreements with plaintiffs governing the wages and working conditions of plaintiffs' brakemen and switchmen as separate classes. Said Brotherhood consists of a general lodge and many subordinate local lodges locate on the lines of railroad operated by plaintiffs and at numerous other places throughout the United States. Said Brotherhood's principal office and place of business is in Cleveland, Ohio, but it has an office and place of business in Dallas, Dallas County, Texas. Said Brotherhood is sued

in its common name and as representative of plaintiffs' brakemen and switchmen as separate classes who have a joint and common interest in this action and who are so numerous as to make it impracticable to bring them all before the Court.

(b) Defendant Local Lodge No. 15 of The Brotherhood of Railroad Trainmen at Denison in Grayson County, Texas, is an unincorporated association and a subordinate and affiliated local lodge of said Brotherhood. It is sued in its common name, as representative of its members who [fol. 10] have a joint and common interest in this action and who are so numerous as to make it impracticable to bring them all before the Court, and as representative of plaintiffs' brakemen and switchmen as separate classes.

(c) Defendant Local Lodge No. 81 of The Brotherhood of Railroad Trainmen at Fort Worth in Tarrant County, Texas, is an unincorporated association and a subordinate and affiliated local lodge of said Brotherhood. It is sued in its common name, as representative of its members who have a joint and common interest in this action and who are so numerous as to make it impracticable to bring them all before the Court, and as representative of plaintiffs' brakemen and switchmen as separate classes.

(d) Defendant Local Lodge No. 499 of The Brotherhood of Railroad Trainmen at Wichita Falls in Wichita County, Texas, is an unincorporated association and a subordinate and affiliated local lodge of said Brotherhood. It is sued in its common name, as representative of its members who have a joint and common interest in this action and who are so numerous as to make it impracticable to bring them all before the Court, and as representative of plaintiffs' brakemen and switchmen as separate classes.

(e) Defendant Local Lodge No. 671 of The Brotherhood of Railroad Trainmen at Wichita Falls in Wichita County, Texas, is an unincorporated association and a subordinate and affiliated local lodge of said Brotherhood. It is sued in its common name, as representative of its members who have a joint and common interest in this action and who are so numerous as to make it impracticable to bring them all

before the Court, and as representative of plaintiffs' brakemen and switchmen as separate classes.

(f) Defendant Local Lodge No. 822 of The Brotherhood of Railroad Trainmen at Denison in Grayson County, Texas, is an unincorporated association and a subordinate and affiliated local lodge of said Brotherhood. It is sued in its common name, as representative of its members who have a joint and common interest in this action and who are so numerous as to make it impracticable to bring them all before the Court, and as representative of plaintiffs' switchmen as a class.

(g) Defendant E. B. Boggs is a resident and citizen of Dallas County, Texas, and is sued individually, as Vice President of The Brotherhood of Railroad Trainmen, and as representative of plaintiffs' brakemen and switchmen as separate classes.

[fol. 11] (h) Defendant Charles Luna is a resident and citizen of Dallas County, Texas, and is sued individually, as Vice President of The Brotherhood of Railroad Trainmen, and as representative of plaintiffs' brakemen and switchmen as separate classes.

(i) Defendant C. L. Flanery is a resident and citizen of Grayson County, Texas, and is sued individually, as General Chairman of The Brotherhood of Railroad Trainmen on the lines of railroad operated by plaintiffs, and as representative of plaintiffs' brakemen and switchmen as separate classes.

(j) Defendant B. G. Ard is a resident and citizen of Grayson County, Texas, and is sued individually, as President of Local Lodge No. 15 of The Brotherhood of Railroad Trainmen, as representative of the members of Local Lodge No. 15, and as representative of plaintiffs' brakemen and switchmen as separate classes.

(k) Defendant M. J. Brady, Jr. is a resident and citizen of Grayson County, Texas, and is sued individually, as Local Chairman of Local Lodge No. 15 of The Brotherhood of Railroad Trainmen, as representative of the members of Local Lodge No. 15, and as representative of plaintiffs' brakemen and switchmen as separate classes.

(l) Defendant J. C. Story is a resident and citizen of Grayson County, Texas, and is sued individually, as Local Chairman of Local Lodge No. 15 of The Brotherhood of Railroad Trainmen, as representative of the members of Local Lodge No. 15, and as representative of plaintiffs' brakemen and switchmen as separate classes.

(m) Defendant W. J. Nelms is a resident and citizen of Tarrant County, Texas, and is sued individually, as Local Chairman of Local Lodge No. 81 of The Brotherhood of Railroad Trainmen as representative of the members of Local Lodge No. 81, and as representative of plaintiffs' brakemen and switchmen as separate classes.

(n) Defendant G. L. Strother is a resident and citizen of Wichita County, Texas, and is sued individually, as President of Local Lodge No. 499 of The Brotherhood of Railroad Trainmen, as representative of the members of Local Lodge No. 499, and as representative of plaintiffs' brakemen and switchmen as separate classes.

[fol. 12] (o) Defendant L. A. Scherff is a resident and citizen of Wichita County, Texas, and is sued individually, as Local Chairman of Local Lodge No. 499 of The Brotherhood of Railroad Trainmen, as representative of the members of Local Lodge No. 499, and as representative of plaintiffs' brakemen and switchmen as separate classes.

(p) Defendant H. W. Coffman is a resident and citizen of Wichita County, Texas, and is sued individually, as Secretary of Local Lodge No. 499 of The Brotherhood of Railroad Trainmen, as representative of the members of Local Lodge No. 499, and as representative of plaintiffs' brakemen and switchmen as separate classes.

(q) Defendant C. B. Huffaker is a resident and citizen of Dallas County, Texas, and is sued individually, as Local Chairman of Local Lodge No. 671 of The Brotherhood of Railroad Trainmen, as representative of the members of Local Lodge No. 671, and as representative of plaintiffs' brakemen and switchmen as separate classes.

(r) Defendant C. B. Pritchard is a resident and citizen of Grayson County, Texas, and is sued individually, as

President of Local Lodge No. 822 of The Brotherhood of Railroad Trainmen, as representative of the members of Local Lodge No. 822, and as representative of plaintiffs' switchmen as a class.

(s) Defendant S. E. Rainey is a resident and citizen of Grayson County, Texas, and is sued individually, as Local Chairman of Local Lodge No. 822 of The Brotherhood of Railroad Trainmen, as representative of the members of Local Lodge No. 822, and as representative of plaintiffs' switchmen as a class.

(t) Defendants Ray Welch, F. E. Jenkins, Lester Ingle, W. S. Rodgers, C. D. Horn, W. A. Carter, S. O. Bissett, Jr., C. W. Storrer, J. O. Flint, and F. C. McGuire, are residents and citizens of Tarrant County, Texas, are switchmen for plaintiff Texas Company, and are sued individually and as representatives of plaintiffs' switchmen as a class.

(u) Defendants F. J. Davenport, W. H. Chappell, R. Peters, O. L. Haggard, W. D. Nortrip, G. W. Morgan, J. D. O'Connor, W. G. Green, R. F. Huffaker, G. W. Shackleford, A. L. Felton, and C. R. Senter, are residents of Dallas County, Texas, are switchmen for plaintiff Texas Company, and are sued individually and as representatives of plaintiffs' switchmen as a class.

[fol. 13] (v) Defendants J. L. Bright, W. R. Chapman, Jack Moore, D. S. Simpson, R. O. Tune, A. L. Riddle, L. M. Green, H. L. Powell, F. R. McKinney, Dave Hopkins, and J. C. Poole, are residents and citizens of Grayson County, Texas, are brakemen for plaintiff Missouri Company, and are sued individually and as representatives of plaintiffs' brakemen as a class.

(w) Defendants H. F. Hale, R. V. Gordy, L. L. Owens, F. L. Luckie, D. L. Smith, J. C. Volpert, M. B. Hodge, R T. Burkett, J. K. Sheeler, G. W. Shreves, and J. L. D. Snyder, are residents and citizens of Grayson County, Texas, are brakemen for plaintiff Texas Company, and are sued individually and as representatives of plaintiffs' brakemen as a class.

(x) Defendants F. W. Irwin, H. H. Wright, A. L. Barr, E. A. Blair, W. C. Rutledge, W. E. Nichols, P. George, C. A. Johnson, F. X. Ford, A. W. Parker, H. T. Shelton, and T. E. Eldridge, are residents and citizens of Grayson County, Texas, are switchmen for plaintiff Texas Company, and are sued individually and as representatives of plaintiffs' switchmen as a class.

(y) Defendants W. E. Smith, John Ambrose, J. A. Morgan, and S. J. Harmon, are residents and citizens of Wichita County, Texas, are brakemen for plaintiffs Missouri Company and Texas Company, and are sued individually and as representatives of plaintiffs' brakemen as a class.

(z) Defendants R. Thompson, S. D. Scherff, R. L. Smith, B. McCoy, J. J. Cook, R. A. Donahue, J. George, G. T. Latham, and R. P. Carter, are residents and citizens of Wichita County, Texas, are switchmen for plaintiff Texas Company, and are sued individually and as representatives of plaintiffs' switchmen as a class.

V

(a) Defendant The Order of Railroad Conductors and Brakemen is an unincorporated association, and a labor organization under the Railway Labor Act, certified and recognized as the collective bargaining agent under that Act for all of plaintiffs' employees classified as conductors, and in that capacity said Order is a party to the current agreements with plaintiffs governing the wages and working conditions of plaintiffs' conductors as a class. Said Order consists of a general lodge and many subordinate local lodges located on the lines of railroad operated by plaintiffs and at numerous other places throughout the United States. Said Order's principal office and place of [fol. 14] business is in Cedar Rapids, Iowa, but it has an office and place of business in Smithville, Bastrop County, Texas. Said Order is sued in its common name and as representative of plaintiffs' conductors as a class who have a joint and common interest in this action and who are so numerous as to make it impracticable to bring them all before the Court.

(b) Defendant Division No. 53 of The Order of Railroad Conductors and Brakemen at Denison in Grayson County, Texas, is an unincorporated association and a subordinate and affiliated local lodge of said Order. It is sued in its common name, as representative of its members who have a joint and common interest in this action and who are so numerous as to make it impracticable to bring them all before the Court, and as representative of plaintiffs' conductors as a class.

(c) Defendant Division No. 515 of The Order of Railroad Conductors and Brakemen at Wichita Falls in Wichita County, Texas, is an unincorporated association and a subordinate and affiliated local lodge of said Order. It is sued in its common name, as representative of its members who have a joint and common interest in this action and who are so numerous as to make it impracticable to bring them all before the Court, and as representative of plaintiffs' conductors as a class.

(d) Defendant B. W. Foster is a resident and citizen of Bastrop County, Texas, and is sued individually, as General Chairman of The Order of Railroad Conductors and Brakemen on the lines of railroad operated by plaintiffs, and as representative of plaintiffs' conductors as a class.

(e) Defendant F. M. Scoggin is a resident and citizen of Grayson County, Texas, and is sued individually, as Local Chairman of Division No. 53 of The Order of Railroad Conductors and Brakemen on the lines of railroad operated by plaintiffs, and as representative of plaintiffs' conductors as a class.

(f) Defendant F. L. Luckie is a resident and citizen of Grayson County, Texas, and is sued individually, as Local Chairman of Division No. 53 of The Order of Railroad Conductors and Brakemen on the lines of railroad operated by plaintiffs, and as representatives of plaintiffs' conductors as a class.

(g) Defendant C. S. Cowell is a resident and citizen of Grayson County, Texas, and is sued individually, as Chief

[fol. 15] Conductor of Division No. 53 of The Order of Railroad Conductors and Brakemen on the lines of railroad operated by plaintiffs, and as representative of plaintiffs' conductors as a class.

(h) Defendant R. I. England is a resident and citizen of Wichita County, Texas, and is sued individually, as President of Division No. 515 of The Order of Railroad Conductors and Brakemen on the lines of railroad operated by plaintiffs, and as representative of plaintiffs' conductors as a class.

(i) Defendant Chris Ausland is a resident and citizen of Wichita County, Texas, and is sued individually, as Secretary of Division No. 515 of The Order of Railroad Conductors and Brakemen on the lines of railroad operated by plaintiffs, and as representative of plaintiffs' conductors as a class.

(j) Defendants John Hopkins, C. M. McManis, R. L. Drumb, L. Melson, Jack Oram, E. E. Smart, G. E. Dusenberry, M. D. Harvey, J. O. Williams, A. L. Hammock, and L. A. Scoggins, are residents and citizens of Grayson County, Texas, and are conductors for plaintiff Missouri Company, and are sued individually and as representatives of plaintiffs' conductors as a class.

(k) Defendants H. T. Hoskins, W. T. Rutherford, C. E. Harris, J. H. Fairbanks, R. D. Jones, H. H. Brigham, P. J. Riley, A. H. Allen, B. Thomason, I. W. Lord, C. G. Allen, and M. A. Berry, are residents and citizens of Grayson County, Texas, are conductors for plaintiff Texas Company, and are sued individually and as representatives of plaintiffs' conductors as a class.

(l) Defendants J. I. Burt, W. J. Dowell, and L. A. Scherff, are residents and citizens of Wichita County, Texas, are conductors for plaintiffs Missouri Company and Texas Company, and are sued individually and as representatives of plaintiffs' conductors as a class.

VI

The defendants sued in representative capacities will adequately represent the classes whom they are alleged to represent.

VII

The jurisdiction of this Court attaches and is invoked under Acts of Congress and Statutes of the United States, namely: Acts of June 25, 1948, United States Code, Title 28, Sections 1331 and 1337; Railway Labor Act, United States Code, Title 45, Sections 151, et seq.; and Interstate Commerce Act, United States Code, Section 1, et seq.

The amount involved in this controversy exceeds the sum of Ten Thousand ($10,000.00) Dollars exclusive of interest and costs.

[fol. 16] VIII

Defendants, The Brotherhood of Locomotive Engineers, The Brotherhood of Locomotive Firemen and Enginemen, The Brotherhood of Railroad Trainmen, and The Order of Railway Conductors and Brakemen have ordered the employees of plaintiffs Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas who are represented by said Brotherhoods and Order, namely, plaintiffs' engineers, firemen, conductors, brakemen and switchmen, to strike and to cease work for plaintiffs at 6:00 o'clock a. m. on 6th of November, 1958, and plaintiffs are informed and believe and therefore aver that said employees, pursuant to such orders of said Brotherhoods and Order, will strike and cease work for plaintiffs at such time unless this Court grants the temporary restraining order for which they hereinafter pray.

IX

(a) Said Brotherhood and Order have declared that said strike and cease work orders were issued because plaintiffs have abolished established terminals and changed intra-divisional service on the Western Subdivision of the Southern Division of plaintiffs' lines of railroad, being 302 miles of branch line railroad extending from Wichita Falls,

Texas, to Forgan, Oklahoma, contrary to and in violation of the provisions of Article 6 of a National Agreement dated May 25, 1951, between defendant The Brotherhood of Railroad Trainmen and representatives of numerous railroad companies, including plaintiffs; contrary to and in violation of the provisions of Article 4 of a National Agreement dated May 23, 1952, between defendant The Brotherhood of Locomotive Engineers and representatives of numerous railroad companies, including plaintiffs; contrary to and in violation of the provisions of Article 4 of a National Agreement dated May 23, 1952, between defendant The Brotherhood of Locomotive Firemen and Engineers and representatives of numerous railroad companies, including plaintiffs; and contrary to and in violation of the provisions of Article 6 of a National Agreement dated May 23, 1952, between The Order of Railway Conductors, now The Order of Railway Conductors and Brakemen, defendant, and representatives of numerous railroad companies, including plaintiffs.

(b) The provisions of Article 6 of said National Agreement dated May 25, 1951, with defendant The Brotherhood of Railroad Trainmen never became an agreement between that Brotherhood and plaintiffs Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas because paragraph (d) of that [fol. 17] Article provided that such provisions or rule should become effective August 1, 1951, "except on such carriers as may elect to preserve existing rules or practices and so notify the authorized employee representatives on or before July 1, 1951" and plaintiffs, and each of them, as provided in said paragraph, did elect to preserve existing rules or practices and did so notify the authorized employee representatives on the lines of railroad operated by plaintiffs on or before July 1, 1951.

(c) The provisions of Article 6 of said National Agreement dated May 23, 1952, with The Order of Railway Conductors, now The Order of Railway Conductors and Brakemen, defendant, became an agreement on August 1, 1952, between said Order and plaintiffs Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad

Company of Texas, but said agreement was cancelled in the year 1954 when said Order and plaintiffs agreed upon a reprint of their agreements and agreed (1) not to reproduce the provisions of Article 6 of said National Agreement dated May 23, 1952, (2) that said provisions were rejected, and (3) that existing rules or practices were preserved. In the alternative, plaintiffs allege that said agreement of August 1, 1952, is applicable only in those instances "where a carrier desires to establish interdivisional, interseniority district, intradivisional, or intraseniority district runs in passenger or freight service"; that said agreement does not apply to terminals; and that said agreement is not applicable to runs on plaintiffs' 302 miles of branch line railroad between Wichita Falls, Texas, and Forgan, Oklahoma, being the Western Subdivision of the Southern Division of plaintiffs' lines of railroads, because said 302 miles of branch line now is and always has been a separate seniority district for plaintiffs' engineers, firemen, conductors and brakemen, and each of such employees holding seniority on such district now has and always has had the right to exercise such seniority anywhere on such district and to perform any needed service over all or any part of said district to which he is or was entitled by virtue of such seniority.

(d) The provisions of Article 4 of said National Agreement dated May 23, 1952, with defendant The Brotherhood of Locomotive Engineers and the provisions of Article 4 of said National Agreement dated May 23, 1952, with defendant The Brotherhood of Locomotive Firemen and Enginemen became agreements on August 1, 1952, between those respective Brotherhoods and plaintiffs Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas. Said agreements of August 1, 1952, are identical and each is applicable only [fol. 18] in those instances "where a carrier desires to establish interdivisional, interseniority district, intradivisional, or intraseniority district runs in passenger or freight service". Neither of said agreements applies to terminals and neither of said agreements is applicable to runs on plaintiffs' said 302 miles of branch line railroad

between Wichita Falls, Texas, and Forgan, Oklahoma, for the reasons alleged in preceding paragraph (c) which are hereby adopted.

(e) In the alternative, plaintiffs allege that said agreements of August 1, 1952, are not applicable to any terminal or run on said 302 miles of branch line of railroad because, under other agreements between plaintiffs and defendant Brotherhoods and Order in effect on August 1, 1952, and now in effect, plaintiffs have had and had the right to establish, abolish, and change any terminal on said branch line and to establish, lengthen, shorten, abolish, and change, any run or runs on said branch line, and such agreements and rights were not affected by any of said agreements of August 1, 1952.

(f) In the alternative, plaintiffs allege that said agreements of August 1, 1952, are not applicable to said 302 miles of branch line of railroad because the runs being operated on said branch line were established many years prior to August 1, 1952, under agreements between plaintiffs and defendant Brotherhoods and Order then and now in effect, and said runs were not established under or pursuant to any of said agreements of August 1, 1952.

(g) In the alternative, plaintiffs allege that said agreements of August 1, 1952, do not apply to any run or runs being operated on said 302 miles of branch line of railroad because plaintiffs only reduced the number of said runs, lengthened the mileage of the remaining runs, and changed some of the terminals for the remaining runs, which is not covered or prohibited by any of said agreements of August 1, 1952.

X

Plaintiffs Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas together operate a unified system of railroads aggregating 2,919 miles in both interstate and intrastate commerce, employing many thousands of employees, serving directly many thousands of industries in many hundreds of communities in the States of Missouri, Kansas, Oklahoma, and Texas. In the course of plaintiffs' operations, they trans-

port annually in excess of 13 million tons of freight and 300,000 passengers and many thousands of cars of United States mail and railway express, which has produced gross revenues to plaintiffs in excess of $60,000,000.00 annually for each of the last several years. The strike and cease work orders of defendants The Brotherhood of Locomotive [fol. 19] Engineers, The Brotherhood of Locomotive Firemen and Enginemen, The Brotherhood of Railroad Trainmen, and The Order of Railway Conductors and Brakemen, apply to and affect all personnel actually operating plaintiffs' trains and switch engines, and the inevitable result of a strike by said employees would be to halt completely all train and yard movements on all of plaintiffs' lines of railroad, to deny work to all plaintiffs' employees other than those occupying executive or supervisory positions (approximately 100 in number) and cause loss of wages to said employees, to disrupt and prevent the transportation of inbound and outbound shipments to the great majority of the industries served by plaintiffs, and also to many of the communities so served, to disrupt and possibly prevent the transportation of passengers, United States mail and express to such communities, all with the attendant harm and damage to shippers and patrons dependent upon plaintiffs, and to the public generally; and that such strike action would also directly and immediately deprive plaintiffs of substantially all of their revenues, being in excess of $60,000,000.00 a year, and would prevent plaintiffs, if said strike action be continued for any substantial period of time, from meeting its required periodical charges under its presently existing and effective mortgages and various conditional sales and equipment trust agreements whereunder it has acquired the great majority of its locomotives and cars, thereby resulting in defaults under its mortgages and equipment obligations, which could possibly result in the total loss of such equipment and lines of railroad. The following specific loss and damage would be sustained by plaintiffs, their employees, and the communities and industries served by plaintiffs, if said strike action is not prevented, enjoined, and restrained:

More than 3300 of plaintiffs' employees would immediately be deprived of work and would lose wages in excess of $60,000.00 daily.

Plaintiffs would be compelled to discontinue service immediately to more than 3600 industries which they alone now serve and to discontinue immediately their service to more than 1300 industries which are now served by plaintiffs and other railroads.

Plaintiffs would be compelled to close immediately more than 500 stations now serving cities, towns, and communities in the States of Missouri, Kansas, Oklahoma, and Texas.

[fol. 20] The discontinuance of such service to industries, cities, towns and communities would prevent them from shipping and receiving, and would deprive plaintiffs of transporting, more than 900 cars or 74,000 tons of freight each day.

Plaintiffs would be compelled to discontinue immediately the transportation of passengers and freight which amounted to 307,245 passengers in 1957 and 88,515 passengers during the first six months of 1958, and 376,287 cars and 13,531,941 tons of freight in 1957, and 163,947 cars and 6,082,873 tons of freight during the first six months of 1958. The stoppage of such transportation and the consequent immediate diversion of passengers and freight traffic to other lines would result in immediate and irreparable loss to plaintiffs of revenue totaling more than $160,000.00 per day based upon revenues for the first seven months of 1958 which were as follows: passengers, $772,000.00; United States mail, express, and miscellaneous, $3,383,130.00; freight, $31,047,641.00; total, $35,202,771.00. Comparative figures for the year 1957 were as follows: passengers, $2,150,431.00; United States mail, express and miscellaneous, $6,463,064.00; freight, $57,954,307.00; total $66,567,801.00. Of such total revenues, $11,258,954.00 was derived from the transportation of intrastate commerce, divided as follows: Missouri, $1,495,495.00; Kansas, $486,956.00; Oklahoma, $1,260,014.00; Texas, $8,016,489.00. The re-

maining revenues of $55,308,847.00 were derived from the transportation of passengers and freight in interstate commerce to, from, and between the States of Missouri, Kansas, Oklahoma, and Texas, and between those States and practically every other State in the United States.

Plaintiffs would be deprived of earning the sums of money necessary to meet interest payments under its mortgage and equipment obligations which totaled $3,798,906.00 during the year 1957 and $2,220,344.00 for the first seven months of 1958, or an average of more than $10,000.00 per day.

For such immediate and irreparable injury, loss and damage, plaintiffs have no adequate remedy at law.

Wherefore, plaintiffs pray that the Court issue a temporary restraining order and a preliminary injunction to be made permanent on final hearing, restraining and enjoining defendants The Brotherhood of Locomotive En- [fol. 21] gineers; The Brotherhood of Locomotive Firemen and Enginemen; The Brotherhood of Railroad Trainmen; The Order of Railroad Conductors and Brakemen; Divisions Nos. 177, 568, and 736, of The Brotherhood of Locomotive Engineers; Local Lodges Nos. 8, 632, and 776, of The Brotherhood of Locomotive Firemen and Enginemen; Local Lodges Nos. 15, 81, 499, 671, and 822, of The Brotherhood of Railroad Trainmen; Divisions Nos. 53 and 515 of The Order of Railroad Conductors and Brakemen; all members and officers of said Brotherhoods, Order, Divisions, and Local Lodges; all individual defendants; all engineers, firemen, brakemen, switchmen, and conductors, of plaintiffs, and each of them; and all persons acting in concert or participation with said Brotherhoods, Order, Divisions, Local Lodges, members, officers, individual defendants, engineers, firemen, brakemen, switchmen, and conductors, from (1) calling, ordering, authorizing, instigating, inducing, encouraging, participating in, approving, starting, continuing, or carrying out said strike or work stoppage on plaintiffs' railroads, or either of them, and all other acts in furtherance or support thereof; (2) from picketing any of the premises on which plaintiffs, or either of them, conduct their rail-

road operations, including the entrance and exit thereto, and all other places where any of the railroad business and operations of plaintiffs, or either of them, are carried on; (3) from interfering with ingress to or egress from said premises or any of them; (4) from interfering in any manner with the delivery, loading, unloading, dispatch and movement of any of the rolling stock, engines, cars, equipment or trains, or any of the contents thereof, of plaintiffs or either of them; (5) from loitering or congregating on any of the premises of plaintiffs, or either of them, or at or near any approaches to said premises, or upon any public street or highway leading to or from any place or places where the employees of plaintiffs, or either of them, or any person or persons having business with plaintiffs, or either of them, desire to enter or leave enroute to or from any of said premises; (6) from in any manner interfering with or inducing or endeavoring to induce any person employed by plaintiffs, or either of them, from performing his work and duties and from in any manner endeavoring to induce any such employee to desist therefrom; and (7) directing said Brotherhoods, Order, Divisions, Local Lodges, members, officers, individual defendants, engineers, firemen, brakemen, switchmen, conductors, and all persons acting in concert or participation with them to take all steps within their power to prevent said threatened strike from occurring or from continuing if commenced.

[fol. 22] Plaintiff further prays that citation issue to defendants and each of them in the manner provided by law and that on final hearing they have judgment against defendants, and for such other and further relief as the Court may deem proper.

W. A. Thie, M. E. Clinton, M. W. Reeves, Barrett Building, Denison, Texas;

O. O. Touchstone, 405 Southland Life Building, Dallas 1, Texas;

Attorneys for Plaintiffs.

Duly sworn to by A. F. Winkel, jurat omitted in printing.

[fol. 23]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

Civil Action No. 8061

[Title omitted]

TEMPORARY RESTRAINING ORDER—November 6, 1958

On this 6th day of November, 1958, there was presented to the Court plaintiffs' application for a temporary restraining order as prayed in the verified complaint in the above entitled cause;

And it appearing to the Court from said verified complaint that the named labor organization defendants have ordered the engineers, firemen, brakemen, switchmen and conductors of plaintiff railroad companies to strike and cease work for plaintiffs at 6:00 o'clock a. m. on the 6th day of November, 1958, and that said employees of plaintiffs will obey such orders unless a temporary restraining order is issued as prayed;

And it further appearing to the Court from said verified complaint that such strike and cease work orders are based in part upon alleged violations by plaintiffs of labor agreements which do not exist and in part upon alleged violations by plaintiffs of labor agreements which do not govern and control the alleged controversy between plaintiffs and the labor organization defendants;

And it further appearing to the Court from said verified complaint that a strike of said employees of plaintiffs would immediately (1) stop all transportation by plaintiffs of passengers, freight, United States mail, and express, in interstate commerce and intrastate commerce over 2,919 miles of track in the States of Missouri, Kansas, Oklahoma and Texas; (2) deprive more than 3300 employees of plaintiffs of work, with a loss of their wages in excess of $60,000.00 daily; (3) deprive more than 3600

[fol. 24] industries of daily rail service which they can get only from plaintiffs, and deprive more than 1300 other industries of daily rail service which they are now receiving from plaintiffs; (4) compel plaintiffs to close more than 500 stations now daily serving cities, towns, and communities in the States of Missouri, Kansas, Oklahoma and Texas; (5) compel plaintiffs to divert passengers, freight, United States mail, and express, to other carriers; (6) deprive plaintiffs of revenues in excess of $160,000.00 daily; and (7) jeopardize the financial stability of plaintiffs and subject them to possible mortgage foreclosures by making it impossible for plaintiffs to earn the money necessary to meet fixed mortgage and equipment trust payments and interest charges;

And it further appearing to the Court from said verified complaint that said injuries, loss and damage to plaintiffs will be immediate and irreparable and for which plaintiffs, and neither of them, have any remedy at law;

And it further appearing to the Court that plaintiffs would suffer such immediate and irreparable injuries, loss and damage if a temporary restraining order is not issued until notice of plaintiffs' application for such order is served upon defendants and a hearing is held thereon, and that a temporary restraining order should be issued to prevent such immediate and irreparable injuries, loss and damage;

It is therefore Ordered that defendants The Brotherhood of Locomotive Engineers; The Brotherhood of Locomotive Firemen and Enginemen; The Brotherhood of Railroad Trainmen; The Order of Railroad Conductors and Brakemen; Divisions Nos. 177, 568, and 736, of The Brotherhood of Locomotive Engineers; Local Lodges Nos. 8, 632, and 776, of The Brotherhood of Locomotive Firemen and Enginemen; Local Lodges Nos. 15, 81, 499, 671, and 822, of The Brotherhood of Railroad Trainmen; Divisions Nos. 53 and 515 of The Order of Railroad Conductors and Brakemen; all members and officers of said Brotherhoods, Order, Divisions, and Local Lodges; H. C. Hobart individually, and as Assistant Grand Chief En-

gineer of The Brotherhood of Locomotive Engineers; M. F. Ricter individually, and as Vice Chairman of The Brotherhood of Locomotive Engineers; R. McDaniel individually, and as Local Chairman of Division No. 177 of The Brotherhood of Locomotive Engineers; W. M. Kelly individually, and as Chief Engineer of Division No. 177 of The Brotherhood of Locomotive Engineers; J. H. Williams individually, and as Local Chairman of Division No. 568 of The Brotherhood of Locomotive Engineers; J. L. Scott in- [fol. 25] dividually, and as Chief Engineer of Division No. 568 of The Brotherhood of Locomotive Engineers; A. M. Hanks individually, and as President of Division No. 736 of The Brotherhood of Locomotive Engineers; A. B. Peterson individually, and as Local Chairman of Division No. 736 of The Brotherhood of Locomotive Engineers; R. W. Wilson individually, and as Secretary of Division No. 736 of The Brotherhood of Locomotive Engineers; R. G. Rogerson individually, and as Vice President of The Brotherhood of Locomotive Firemen and Enginemen; R. M. Brady individually, and as General Chairman of The Brotherhood of Locomotive Firemen and Enginemen; L. J. Derichsweiler individually, as Second Vice Chairman of The Brotherhood of Locomotive Firemen and Enginemen, and as Local Chairman of Local Lodge No. 776 of said Brotherhood; O. W. Wells individually, and as Secretary-Treasurer of The Brotherhood of Locomotive Firemen and Enginemen, and as Local Chairman of Local Lodge No. 8 of said Brotherhood; H. L. Duncan individually, and as President of Local Lodge No. 8 of The Brotherhood of Locomotive Firemen and Enginemen; C. R. Gullahorn individually, and as President of Local Lodge No. 632 of The Brotherhood of Locomotive Firemen and Enginemen; G. W. Nelson individually, and as Local Chairman of Local Lodge No. 632 of The Brotherhood of Locomotive Firemen and Enginemen; C. L. Hamrick individually, and as Secretary of Local Lodge No. 632 of The Brotherhood of Locomotive Firemen and Enginemen; H. L. Ditto individually, and as President of Local Lodge No. 776 of The Brotherhood of Locomotive Firemen and Enginemen; E. B. Boggs

individually, and as Vice President of The Brotherhood of Railroad Trainmen; Charles Luna individually, and as Vice President of The Brotherhood of Railroad Trainmen; C. L. Flanery individually, and as General Chairman of The Brotherhood of Railroad Trainmen; B. G. Ard individually, and as President of Local Lodge No. 15 of The Brotherhood of Railroad Trainmen; M. J. Brady, Jr. individually, and as Local Chairman of Local Lodge No. 15 of The Brotherhood of Railroad Trainmen; J. C. Story individually, and as Local Chairman of Local Lodge No. 15 of The Brotherhood of Railroad Trainmen; W. J. Nelms individually, and as Local Chairman of Local Lodge No. 81 of The Brotherhood of Railroad Trainmen; G. L. Strother individually, and as President of Local Lodge No. 499 of The Brotherhood of Railroad Trainmen; L. A. Scherff individually, and as Local Chairman of Local Lodge No. 499 of The Brotherhood of Railroad Trainmen; H. W. Coffman individually, and as Secretary of Local Lodge No. 499 of The Brotherhood of Railroad Trainmen; C. B. Huffaker individually, and as [fol. 26] Local Chairman of Local Lodge No. 671 of The Brotherhood of Railroad Trainmen; C. B. Prichard individually, and as President of Local Lodge No. 822 of The Brotherhood of Railroad Trainmen; S. E. Rainey individually, and as Local Chairman of Local Lodge No. 822 of The Brotherhood of Railroad Trainmen; B. W. Foster individually, and as General Chairman of The Order of Railroad Conductors and Brakemen; F. M. Scoggin individually, and as Local Chairman of Division No. 53 of The Order of Railroad Conductors and Brakemen; F. L. Luckie individually, and as Local Chairman of Division No. 53 of The Order of Railroad Conductors and Brakemen; C. S. Cowell individually, and as Chief Conductor of Division No. 53 of The Order of Railroad Conductors and Brakemen; R. I. England individually, and as President of Division No. 515 of The Order of Railroad Conductors and Brakemen; Chris Ausland individually, and as Secretary of Division No. 515 of the Order of Railroad Conductors and Brakemen; W. T. Lowery, J. W. Reece, W. M. Young, H. N. Brown, E. D. Bunt, Jr., D. D. Booten, A. C. Bills, F. A. Ramsey, C. E. Lievsay,

C. W. Redmon, W. A. Newcomb, R. S. Bradshaw, H. E. Oldham, C. H. Preston, F. N. Weems, J. C. Fielder, L. S. Evans, R. D. Pearson, F. Douglas, W. J. Seabaugh, R. P. Cullar, C. L. Cline, J. T. Huseman, J. L. Scott, P. W. Ashburn, C. R. Hauschild, R. M. Clift, B. O. Bilderback, W. F. Mathis, W. L. Trammell, S. H. Squires, R. F. Brown, G. H. Butcher, F. Johnson, T. E. Penn, W. M. Kelly, C. H. Wade, W. A. Fowler, A. G. Malear, L. C. Rodgers, C. E. Greenwood, A. R. Ashley, A. B. Peterson, W. G. Anderson, E. P. Pattison, C. P. Brown, D. W. Bunch, J. C. Coker, R. J. Corcoran, B. T. Crosskno, R. L. Davault, R. B. Davis, S. E. Hall, H. W. Kellum, D. D. Kent, J. E. McClain, M. L. McKamy, T. M. Miller, G. M. Setzer, F. I. Roth, E. L. Wood, H. A. Shoemaker, J. T. Barnhill, R. F. Williams, Glenn Flaherty, R. C. Koiner, R. W. Scoggins, W. R. Byrd, C. H. Browder, R. M. Boyd, B. F. Blanton, T. B. Nelson, Jr., J. L. Wineinger, W. H. Dobbins, R. E. Morrison, Otto Mund, Jr., B. A. Preston, H. M. Tomlinson, W. T. Walker, A. H. Eakin, C. W. Tignor, J. W. Kennedy, C. S. Taylor, L. T. Silk, G. W. Nelson, D. L. Windsor, Ray Welch, F. E. Jenkins, Lester Ingle, W. S. Rodgers, C. D. Horn, W. A. Carter, S. O. Bissett, Jr., C. W. Storrer, J. O. Flint, F. C. McGuire, F. J. Davenport, W. H. Chappell, R. Peters, O. L. Haggard, W. D. Nortrip, G. W. Morgan, J. D. O'Connor, W. G. Green, R. F. Huffaker, G. W. Shackleford, A. L. Felton, C. R. Senter, J. L. Bright, W. R. Chapman, Jack Moore, D. S. Simpson, R. O. Tune, A. L. Riddle, L. M. Green, H. L. Powell, F. R. McKinney, Dave Hopkins, J. C. Poole, H. F. Hale, R. V. Gordy, L. L. Owens, F. L. Luckie, D. L. Smith, J. C. Volpert, M. B. Hodge, R. T. [fol. 27] Burkett, J. K. Sheeler, G. W. Shreves, J. L. D. Snyder, F. W. Irwin, H. H. Wright, A. L. Barr, E. A. Blair, W. C. Rutledge, W. E. Nichols, P. George, C. A. Johnson, F. X. Ford, A. W. Parker, H. T. Shelton, T. E. Eldridge, W. E. Smith, John Ambrose, J. A. Morgan, S. J. Harmon, R. Thompson, S. D. Scherff, R. L. Smith, B. McCoy, J. J. Cook, R. A. Donahue, J. George, G. T. Latham, R. P. Carter, John Hopkins, C. M. McManis, R. L. Drumb, L. Melson, Jack Oram, E. E. Smart, G. E. Dusenberry, M. D. Harvey, J. O. Williams, A. L. Ham-

mock, L. A. Scoggins, H. T. Hoskins, W. T. Rutherford, C. E. Harris, J. H. Fairbanks, R. D. Jones, H. H. Brigham, P. J. Riley, A. H. Allen, B. Thomason, I. W. Lord, C. G. Allen, M. A. Berry, J. I. Burt, W. J. Dowell, and L. A. Scherff; all engineers, firemen, brakemen, switchmen, and conductors, of plaintiffs, and each of them; and all persons acting in concert or participation with said Brotherhoods, Order, Divisions, Local Lodges, members, officers, individual defendants, engineers, firemen, brakemen, switchmen, and conductors, from (1) calling, ordering, authorizing, instigating, inducing, encouraging, participating in, approving, starting, continuing, or carrying out said strike or work stoppage on plaintiffs' railroads, or either of them, and all other acts in furtherance or support thereof; (2) from picketing any of the premises on which plaintiffs, or either of them, conduct their railroad operations, including the entrance and exit thereto, and all other places where any of the railroad business and operations of plaintiffs, or either of them, are carried on; (3) from interfering with ingress to or egress from said premises or any of them; (4) from interfering in any manner with the delivery, loading, unloading, dispatch and movement of any of the rolling stock, engines, cars, equipment or trains, or any of the contents thereof, of plaintiffs or either of them; (5) from loitering or congregating on any of the premises of plaintiffs, or either of them, or at or near any approaches to said premises, or upon any public street or highway leading to or from any place or places where the employees of plaintiffs, or either of them, or any person or persons having business with plaintiffs, or either of them, desire to enter or leave enroute to or from any of said premises; (6) from in any manner interfering with or inducing or endeavoring to induce any person employed by plaintiffs, or either of them, from performing his work and duties and from in any manner endeavoring to induce any such employee to desist therefrom;

It is Further Ordered that this temporary restraining order shall become effective upon the filing of a bond, approved by this Court or its Clerk, in the sum of Five

[fol. 28] Thousand Dollars ($5,000.00) executed by plaintiffs and good and sufficient surety, payable to the defendants and providing for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained;

It is Further Ordered that this temporary restraining order shall expire at 10:00 o'clock a. m. on November 7, 1958, unless, before such expiration, it is extended by order of this Court for good cause shown; and

It is Further Ordered that plaintiffs' application for a preliminary injunction be and the same hereby is set for hearing at 10:00 o'clock a. m. on November 15, 1958.

Issued at 4:26 o'clock a. m. on this 6th day of November, 1958.

T. Whitfield Davidson, Chief Judge.

[fol. 29] Temporary Restraining Order Bond—Filed November 6, 1958 (omitted in printing).

[fol. 35]

In the United States District Court

For the Northern District of Texas

Dallas Division

Civil Action No. 8061

[Title omitted]

Motion to Dismiss Temporary Restraining Order and Complaint—Filed November 7, 1958

To the Honorable Judge of Said Court:

Come Now the Defendants, Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Brotherhood of Railroad Trainmen, and the Order of Railroad Conductors and Brakemen, Defendants

in the above numbered and entitled cause, and move this Honorable Court to dismiss the Temporary Restraining Order and Complaint, filed herein, for want of jurisdiction; and in support of this motion would show:

1. That the rights of the parties, plaintiffs and defendants, are governed by the Federal Railway Labor Act, Title 45, Sec. 151, et seq., United States Code Annotated, since this suit involves a dispute between the carrier and its employees arising out of grievances or out of the interpretation and application of agreements concerning rates of pay, rules, or working conditions, and that the plaintiff carriers have attempted to change certain collective bargaining agreements affecting rates of pay, rules, or working conditions, within the meaning of Section 6 of the Railway Labor Act, also known as Section 156 of Title 45, United States Code Annotated and the plaintiff carriers did fail to give written notice of the intention to change as required by the Act; and that until the plaintiffs comply with the provisions of the Railway Labor Act, this suit is prematurely brought and should be dismissed.

2. That plaintiffs' suit should be dismissed for the further reason that plaintiffs failed to state a claim upon which relief can be granted.

[fol. 36] Wherefore, these Brotherhood Defendants pray That the Temporary Restraining Order heretofore issued herein be in all things dissolved and That plaintiffs' complaint be dismissed.

Respectfully submitted:

Willis & Willis, By J. Hart Willis, 2408 Tower Petroleum Building, Dallas 1, Texas, RI 2-6186, Attorneys for the four named Brotherhoods.

A copy of this Motion has been furnished to

Mr. M. E. Clinton, Assistant General Counsel, Missouri-Kansas-Texas Railroad, Denison, Texas, Attorney for Plaintiffs Missouri-Kansas-Texas Railway Co. et al.

[fol. 38]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

Civil Action No. 8061

[Title omitted]

ORDER EXTENDING TEMPORARY RESTRAINING ORDER—
Entered November 7, 1958

It appearing to the Court that plaintiffs' engineers, firemen, conductors, brakemen and switchmen did strike and cease to work for plaintiffs at 6:00 o'clock A. M., on November 6, 1958, pursuant to orders issued by defendants The Brotherhood of Locomotive Engineers, The Brotherhood of Locomotive Firemen and Enginemen, The Brotherhood of Railroad Trainmen, and The Order of Railway Conductors and Brakemen; and

It further appearing to the Court that said strike stopped transportation by plaintiffs of passengers, freight, United States mail, and express, in interstate commerce and intrastate commerce; and

It further appearing to the Court that said strike is causing the injuries, losses and damages set forth in the verified complaint and in the temporary restraining order issued herein and is causing immediate and irreparable injuries, loss and damage to plaintiffs for which they have no adequate remedy at law; and

It further appearing to the Court that said strike will continue, that such injuries, losses and damages will be sustained, and that plaintiffs will continue to suffer such irreparable injuries, losses and damages if the temporary restraining order issued herein is not extended;

It is Ordered, for good cause shown, that the temporary restraining order issued herein, and which by its terms will expire at 10:00 o'clock A. M., on November 7, 1958, is [fol. 39] hereby extended to 10:00 o'clock A. M., on No-

vember 15, 1958, the time set for the hearing on plaintiffs' application for a preliminary injunction.

It is Further Ordered that the temporary restraining order bond on file be continued in effect during such extension of said temporary restraining order.

T. Whitfield Davidson, Chief Judge.

[fol. 40]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

Civil Action No. 8061

[Title omitted]

STIPULATION—Filed November 11, 1958

It is stipulated by and between the parties to the above entitled and numbered cause that, subject to approval of the Court, the temporary restraining order issued in this cause on November 6, 1958, as extended by order of the Court entered November 7, 1958, may be extended to 10:00 o'clock A.M. on December 18, 1958, that the temporary restraining order bond on file may be continued in effect during such further extension, and that the hearing on plaintiffs' application for a preliminary injunction may be reset for 10:00 o'clock A.M. on December 18, 1958.

Dated November 11, 1958.

W. A. Thie, M. E. Clinton, M. W. Reeves, Barrett Building, Denison, Texas;

O. O. Touchstone, 405 Southland Life Building, Dallas 1, Texas;

Attorneys for Plaintiffs.

Willis & Willis, By J. Hart Willis, 1408 Tower Petroleum Building, Dallas 1, Texas, Attorneys for All Defendants.

[fol. 41]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

Civil Action No. 8061

[Title omitted]

ORDER EXTENDING TEMPORARY RESTRAINING ORDER, BOND AND RESETTING CAUSE—November 11, 1958

On stipulation of the parties and for good cause shown,

It is Ordered that the temporary restraining order issued in this cause on November 6, 1958, as extended by order of this Court entered November 7, 1958, is hereby extended to 10:00 o'clock A.M. on December 18, 1958, and the temporary restraining order bond on file is hereby continued in effect during such further extension of said temporary restraining order;

It is Further Ordered that the hearing on plaintiffs' application for a preliminary injunction is reset for 10:00 o'clock A.M. on December 18, 1958; and

It is Further Ordered that the time for filing briefs requested by the Court is extended to December 5, 1958.

Dated November 11, 1958.

T. Whitfield Davidson, Chief Judge.

[fol. 42]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

Civil Action No. 8061

[Title omitted]

DEFENDANTS' ANSWER—Filed November 13, 1958

To the Honorable Judge of Said Court:

Come now the Defendant Brotherhoods and others in above cause and, the Brotherhoods having heretofore filed Motion to Dismiss the Temporary Restraining Order and Complaint and subject to said Motion to Dismiss and without waiving same, file this their Answer.

1. Defendants admit the averments of Paragraphs I, II, III, IV, V, and VI of the Complaint.

2. Defendants deny the averments of Paragraph VII and say that this Honorable Court has no jurisdiction of the subject matter of this suit.

3. With reference to Paragraph VIII, Defendants admit that the therein named Brotherhoods ordered the strike at 6 A.M., November 6, 1958, but deny the remaining averments of said paragraph.

4. Defendants deny the averments of Paragraph IX(a) with reference to the Brotherhood of Railroad Trainmen and to the Order of Railway Conductors and Brakemen, and in this respect say that the Plaintiff Carriers not only abolished established home terminals but also changed tabulated runs in violation of Articles 10, 11, 59, and 60 of their agreement between the Brotherhood of Railroad Trainmen and the Order of Railway Conductors and Brakemen effective November 1, 1929 with revisions to April 1, 1954. Defendants admit the other averments of Paragraph IX(a).

[fol. 43] 5. Defendants admit the allegations of Paragraph IX(b) but say that there are other agreements in force with the Brotherhood of Railroad Trainmen, among them mediation agreement case No. A-5248, dated April 5, 1957, which rendered invalid the action of the Plaintiffs in discontinuing the home terminals and changing the runs.

6. Defendants deny the averments of Paragraphs IX (c), IX(d), IX(e), IX(f), and IX(g).

7. Defendants are without knowledge or information sufficient to form a belief as to the truth of averments of Paragraph X of the Complaint.

First Defense

8. This Honorable Court lacks jurisdiction over the subject matter herein.

Second Defense

9. Plaintiffs fail to state a claim upon which relief can be granted.

Third Defense

10. Defendants arbitrarily abolished established home terminals at Altus and Woodward, Oklahoma, and arbitrarily changed tabulated runs, thus changing working conditions of employees; reducing the number of employees; eliminating constructive mileage allowances of employees; eliminating pay for terminal switching in those locations; and changing intradivisional runs and establishing such runs through established home terminals. Plaintiffs' said actions with reference to the Brotherhood of Railroad Trainmen and the Order of Railway Conductors and Brakemen violate Articles 10(a), 59, and 60 of the agreement effective November 1, 1929 with revisions to April 1, 1954.

11. With reference to all four Brotherhood Defendants, the actions described in Paragraph 10 above are violations of the provisions of Article VIII(b) of the mediation agreement Case No. A-5248, dated April 5, 1957, with the Broth-

erhood of Railroad Trainmen, the substance of which said Article is identical with and included in mediation agreements with the Order of Railway Conductors and Brake-[fol. 44] men (as Article V(b)), the Brotherhood of Locomotive Engineers, and the Brotherhood of Locomotive Firemen and Enginemen. Each of the said four agreements were effected in 1957, and by their terms remain in effect until October 31, 1959 and thereafter until changed or modified.

Said agreements provide a moratorium under which neither the Carriers nor the Brotherhoods can change the working conditions or rates of pay or number of employees required to be used under existing agreements, without mutual agreement; the Brotherhoods have not agreed to the existing changes made by the Carriers without negotiation and not in accordance with the Federal Railway Labor Act.

12. The Plaintiffs' actions described in Paragraph 10 above violate the provisions of Article 6 of the National Agreement dated May 23, 1952, with the Order of Railway Conductors and Brakemen; Articles 4 of the National Agreements dated May 23, 1952 with Brotherhood of Locomotive Engineers and Brotherhood of Locomotive Firemen and Enginemen. These National Agreements, all effective August 1, 1952, provide that when the Carrier, as here, desires to establish intradivisional or intraseniority runs, as here, it shall give notice to the unions and negotiate. Failure to agree, National Mediation Board service may be invoked. If mediation fails or agreement to arbitrate is not made, the proposal may be considered by a national committee known as the "Disputes Committee" composed of representatives of the carrier and union.

The procedures applicable under these National Agreements were not followed by Plaintiffs and no injunction should lie herein. The above conditions precedent were not performed by Plaintiffs.

Fourth Defense

13. The actions of the Plaintiffs described in Paragraph 10 above have violated the provisions of the Railway Labor

Act, 45 U.S.C.A. Sections 151 et seq., and until Plaintiffs have given notice of intended change of working agreements in accordance with 45 U.S.C.A. Section 156, have bargained collectively, and have invoked the services of the National Mediation Board, no injunction against Defendants should lie herein.

[fol. 45] Fifth Defense

14. Plaintiffs come into a court of equity without clean hands in that they are violating the express terms of their agreements with Defendants and the Railway Labor Act.

Wherefore, Defendants pray that no injunction be issued and that the complaint be dismissed, and that Defendants recover their costs.

Harold C. Heiss, Keith Building, Cleveland 15, Ohio;

V. C. Shuttleworth, 1120 Merchants National Bank Building, Cedar Rapids, Iowa;

Harold R. McLaughlin, c/o Hornbeck, Ritter & Victory, 1706 Union Commerce Building, Cleveland 14, Ohio;

Wayland K. Sullivan, 1370 Ontario Street, Cleveland 13, Ohio;

Willis & Willis, By J. Hart Willis, 1408 Tower Petroleum Building, Dallas 1, Texas, RI-2-6186;

Attorneys for Defendants.

Duly sworn to by J. Hart Willis, jurat omitted in printing.

Certificate of Service (omitted in printing).

[fol. 46]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

Civil Action No. 8061

[Title omitted]

STIPULATION RE EXTENDING TIME TO FILE BRIEFS—
December 2, 1958

It is stipulated by and between the parties to the above entitled and numbered cause that, subject to approval of the Court, the time for filing brief requested by the Court may be extended to December 12, 1958.

Dated December 2, 1958.

W. A. Thie, M. E. Clinton, M. W. Reeves, Barrett Building, Denison, Texas;

O. O. Touchstone, 405 Southland Life Building, Dallas 1, Texas,

Attorneys for Plaintiffs.

Willis & Willis, By J. Hart Willis, 408 Tower Petroleum Building, Dallas 1, Texas,

Attorneys for All Defendants.

[fol. 47]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

Civil Action No. 8061

[Title omitted]

ORDER EXTENDING TIME TO FILE BRIEFS—
December 2, 1958

On stipulation of the parties and for good cause shown,

It is Ordered that the time for filing briefs requested by the Court is extended to December 12, 1958.

Dated December 2, 1958.

T. Whitfield Davidson, Chief Judge.

[fol. 54]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

Civil Action No. 8061

[Title omitted]

MOTION FOR ORDER PERMITTING PLAINTIFFS TO AMEND AND SUPPLEMENT COMPLAINT—Filed December 12, 1958

Come now Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, plaintiffs in the above entitled and numbered cause, and move the Court for an order permitting plaintiffs to file the attached amendment and supplement to their original complaint in said cause, and in support of this motion plaintiffs respectfully show:

I

As shown in subparagraph (h) of paragraph XI of the attached pleading, The Brotherhood of Locomotive Engineers, The Brotherhood of Locomotive Firemen and Enginemen, The Brotherhood of Railroad Trainmen, and The Order of Railway Conductors and Brakemen invoked the jurisdiction of the National Mediation Board because of alleged violations by plaintiffs of the National Agreements therein enumerated and which are more fully described in paragraph IX of plaintiffs' original complaint. Because of such representation to said Board, plaintiffs alleged in paragraph IX of their original complaint that the subsequent strike of plaintiffs' engineers, firemen, conductors, brakemen, and switchmen, was called by said Brotherhoods and Order because of said alleged violations. In the answer of said Brotherhoods and Order to plaintiffs' complaint, they allege that plaintiffs also violated the provisions of [fol. 55] various articles of working agreements with some of said defendants and that plaintiffs violated the moratorium provisions of certain mediation agreements between plaintiffs and said defendants. It is necessary, therefore, for plaintiffs to amend their original complaint, as set forth in paragraph XI of the attached pleading, to allege facts, all of which are known to said Brotherhoods and Order, showing that no such violations occurred, and to give the Court more detailed information with respect to the background of this litigation.

II

As shown in paragraph XII of the attached pleading and by the exhibits attached thereto, plaintiffs, though not required so to do, have submitted this entire controversy to the National Railroad Adjustment Board, First Division, and, subject to jurisdictional questions, plaintiffs have submitted other phases of this controversy to the dispute committees created by the agreements which said Brotherhoods and Order claim were violated by plaintiffs. It is necessary, therefore, for plaintiffs to supplement their original complaint, as in paragraph XII of the attached pleading, and by the exhibits attached thereto, in order

to advise the Court of plaintiffs' said submissions to said Board and Committees.

Wherefore, plaintiffs pray that the Court enter an order herein permitting plaintiffs to file the attached amendment and supplement to their original complaint.

W. A. Thie, M. E. Clinton, M. W. Reeves, Barrett Building, Denison, Texas;

O. O. Touchstone, 405 Southland Life Building, Dallas 1, Texas,

Attorneys for Plaintiffs.

[fol. 56] Certificate of Service (omitted in printing).

[fol. 58] AMENDMENT TO MOTION FOR ORDER PERMITTING PLAINTIFFS TO AMEND AND SUPPLEMENT COMPLAINT— Filed December 17, 1958

Come now Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, plaintiffs in the above entitled and numbered cause, and amend their motion for an order permitting plaintiffs to amend and supplement their complaint by adding subparagraphs (i) and (j) to Paragraph XII of said amendment and supplement, reading as follows:

(i) Though not required so to do, plaintiffs are submitting to the National Mediation Board the claims of said Brotherhoods and Order that plaintiffs violated the provisions of Article VIII(b) of said Mediation Agreement Case No. A-5241 dated November 20, 1956, the provisions of Article VIII(b) of said Mediation Agreement Case No. A-5248 dated April 5, 1957, the provisions of Article VIII (b) of said Mediation Agreement Case No. A-5464 dated July 18, 1957, and the provisions of Article V(b) of said Mediation Agreement Case No. A-5294 dated June 12, 1957, when plaintiffs on October 19, 1958, rearranged way freight service between North Yard (Wichita Falls, Texas) and Forgan, Oklahoma, pursuant to and in accordance with plaintiffs' General Order No. 119 dated October 2, 1958, and when plaintiffs on October 19, 1958, abolished Altus,

Oklahoma, and Woodward, Oklahoma, as away-from-home terminals for unassigned crews in through freight service and in lieu thereof established Elk City, Oklahoma, and [fol. 59] Forgan, Oklahoma, as away-from-home terminals for such crews pursuant to and in accordance with plaintiffs' General Order No. 120 dated October 2, 1958. A copy of plaintiffs' said submission to the National Mediation Board is attached hereto, marked "Exhibit I" and made a part hereof, except the exhibits attached to said submission which are now attached as Exhibits A to H, inclusive, to this amendment and supplement to the original complaint.

(j) Though not required so to do, plaintiffs are submitting to the National Mediation Board the claims of The Brotherhood of Locomotive Engineers, The Brotherhood of Locomotive Firemen and Enginemen, and The Order of Railway Conductors and Brakemen, that plaintiffs violated the provisions of Article 4 of said National Agreement of May 23, 1952, with The Brotherhood of Locomotive Engineers, the provisions of Article 4 of said National Agreement of May 23, 1952, with The Brotherhood of Locomotive Firemen and Enginemen, and the provisions of Article 6 of said National Agreement of May 23, 1952, with The Order of Railway Conductors (now The Order of Railway Conductors and Brakemen) when plaintiffs on October 19, 1958, rearranged way freight service between North Yard (Wichita Falls, Texas) and Forgan, Oklahoma, pursuant to and in accordance with plaintiffs' General Order No. 119 dated October 2, 1958, and when plaintiffs on October 19, 1958, abolished Altus, Oklahoma, and Woodward, Oklahoma, as away-from-home terminals for unassigned crews in through freight service and in lieu thereof established Elk City, Oklahoma, and Forgan, Oklahoma, as away-from-home terminals for such crews pursuant to and in accordance with plaintiffs' General Order No. 120 dated October 2, 1958. A copy of plaintiffs' said submission to the National Mediation Board is attached hereto, marked "Exhibit J", and made a part hereof, except the exhibits attached to said submission which are now attached as Exhibits A to H, inclusive, to this amendment and supplement to the original complaint.

It is necessary for plaintiffs to amend said motion and to so supplement said pleading in order to advise the Court of plaintiffs' said submissions to the National Mediation Board.

[fol. 60] Wherefore, plaintiffs pray that the Court enter an order herein permitting plaintiffs to file said amendment and supplement, as herein supplemented, to their original complaint.

W. A. Thie, M. E. Clinton, M. W. Reeves, Barrett Building, Denison, Texas;

O. O. Touchstone, 405 Southland Life Bldg., Dallas 1, Texas,

Attorneys for Plaintiffs.

Certificate of Service (omitted in printing).

[fol. 62]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

Civil Action No. 8061

[Title omitted]

ORDER GRANTING PLAINTIFFS LEAVE TO AMEND AND SUPPLEMENT COMPLAINT—January 13, 1959

On motion of plaintiffs, as amended, and for good cause shown,

It is Ordered that plaintiffs be and they hereby are granted leave to file the pleading entitled "Amendment and Supplement to Complaint" attached to their motion for leave to file, and to supplement said pleading by adding to paragraph XII thereof subparagraphs (i) and (j) as set forth in plaintiffs' amendment to their motion for leave to file.

Entered Jan. 13, as of Dec. 18-58.

T. Whitfield Davidson, Chief Judge.

[fol. 63]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

Civil Action No. 8061

[Title omitted]

AMENDMENT AND SUPPLEMENT TO COMPLAINT—
Filed December 18, 1958

Come now Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, plaintiffs in the above entitled and numbered cause and, with leave of the Court, file this amendment and supplement to their complaint, viz:

Said complaint is amended by adding thereto paragraph XI reading as follows:

XI

(a) This controversy involves a line of railroad of plaintiffs extending from North Yard (Wichita Falls, Texas) to Forgan, Oklahoma, a distance of 302 miles, being the Western Subdivision of the Southern Division of plaintiffs' lines of railroad. This 302-mile line now constitutes and always has constituted a separate seniority district for plaintiffs' engineers, firemen, conductors and brakemen, and each of such employees holding seniority on such district now has and always has had the right to exercise such seniority anywhere on such district and to perform any needed service over all or any part of said district to which he is or was entitled by virtue of such seniority.

(b) Prior to October 19, 1958, way freight crews on said line were assigned as follows:

[fol. 64] Two crews between North Yard (Wichita Falls, Texas) and Welon (Altus, Oklahoma), a distance of 75.9 miles, daily except Sunday, with North Yard the home terminal for both crews, and with Sunday

layover at North Yard for one crew and at Welon for the other crew;

One crew from Welon (Altus, Oklahoma) to Elk City, Oklahoma, and return, a distance of 58.3 miles in each direction, daily except Saturday, with Welon the home terminal and with Saturday layover at Welon;

One crew from Elk City, Oklahoma, to Guest (Woodward, Oklahoma), a distance of 84.8 miles, on Mondays, Wednesdays and Fridays, and from Guest to Elk City on Tuesdays, Thursdays and Saturdays, with Elk City the home terminal and with Sunday layover at Elk City; and

One crew from Guest (Woodward, Oklahoma) to Forgan, Oklahoma, a distance of 83.2 miles, on Mondays, Wednesdays and Fridays, and from Forgan to Guest on Tuesdays, Thursdays and Saturdays, with Guest the home terminal and with Sunday layover at Guest.

Effective at 12.01 A.M. on October 19, 1958, plaintiffs rearranged assigned way freight service between North Yard (Wichita Falls, Texas) and Forgan, Oklahoma, as follows:

Assigned two wayfreight crews to operate between North Yard (Wichita Falls, Texas) and Elk City, Oklahoma, a distance of 134.2 miles, daily except Sunday, with North Yard the home terminal of both crews, and with Sunday layover at North Yard for one crew and at Elk City for the other; and

Assigned one wayfreight crew to operate from Elk City, Oklahoma to Forgan, Oklahoma, a distance of 168 miles, on Mondays, Wednesdays and Fridays, and from Forgan to Elk City on Tuesdays, Thursdays and Saturdays, with Elk City the home terminal and with Sunday layover at Elk City.

This rearrangement of way freight service was made pursuant to and in accordance with plaintiffs' General Order No. 119 dated October 2, 1958, and effective at 12.01 A.M. on October 19, 1958.

(c) Prior to October 19. 1958, North Yard (Wichita Falls, Texas) was the home terminal and Altus, Oklahoma, and Woodward, Oklahoma, were the bulletined away-from-home terminals for unassigned crews in through freight service between North Yard (Wichita Falls, Texas) and Forgan, Oklahoma. Effective at 12.01 A.M. on October 19, 1958, plaintiffs abolished Altus, Oklahoma, and Woodward, Oklahoma, as away-from-home terminals for unassigned crews in through freight service and in lieu thereof established Elk City, Oklahoma, and Forgan, Oklahoma, as away-from-home terminals for such crews, leaving North [fol. 65] Yard (Wichita Falls, Texas) as the home terminal for such crews. This change in away-from-home terminals was made pursuant to and in accordance with plaintiffs' General Order No. 120 dated October 2, 1958, and effective at 12.01 A.M. on October 19, 1958.

(d) North Yard (Wichita Falls, Texas) now is and always has been the home terminal for unassigned crews in through freight service between North Yard (Wichita Falls, Texas) and Forgan, Oklahoma, and North Yard (Wichita Falls, Texas) now is and always has been the only point where an extra board has been maintained for way freight crews and unassigned through freight crews operating between North Yard (Wichita Falls, Texas) and Forgan, Oklahoma.

(e) Assigned way freight crews now handle, and they always have handled, all traffic between North Yard (Wichita Falls, Texas) and Forgan, Oklahoma, except during the grain seasons in May and June of each year unassigned crews in through freight service are called as needed to handle the overflow wheat which cannot be handled by way freight crews and, when so called, unassigned through freight crews operate over all or any portion of the line without changing crews except in rare instances where an available crew is used out of an away-from-home terminal under the first-in first-out rule.

(f) This line has been recently dieselized. Prior thereto all traffic was handled by steam locomotives which were capable of only short runs, making it necessary to have

more terminals. This resulted in considerable terminal delays to through traffic because the requirements of local service made it impossible to arrange through connecting schedules. These delays resulted in the loss of traffic, principally through diversion to trucks. To overcome such losses, it was necessary to expedite the movement of traffic by extending runs and reducing the number of terminals, thereby eliminating all unnecessary terminal delays. This was made possible through the use of diesel power. These were the changes made effective on October 19, 1958.

[fol. 66] (g) On October 7, 1958, representatives of The Brotherhood of Locomotive Engineers, The Brotherhood of Locomotive Firemen and Enginemen, The Brotherhood of Railroad Trainmen, and The Order of Railway Conductors and Brakemen, requested plaintiffs to cancel said General Order No. 119 and said General Order No. 120 and on the same date plaintiffs denied such request.

(h) On October 14, 1958, the Executive Secretary of the National Mediation Board advised plaintiffs' Assistant General Manager that said Brotherhoods and Order had requested the services of the Board "in dispute with MKT Railroad over abolishing established terminals and changing intradivisional service contrary to provisions of Article 4 of BLE, BLF&E, and ORC&B May 23, 1952 and Article 6 May 25, 1951 National Agreements." Said agreements are more fully described in paragraph IX of plaintiffs' complaint.

(i) On October 20, 1958, the Executive Secretary of the National Mediation Board advised plaintiffs' Assistant General Manager and representatives of said Brotherhoods and Order that said application of said Brotherhoods and Order for the services of the Board has been given the Board's file C-2827 and that one of the Board's mediators then in Dallas, Texas, would commence an investigation on October 21, 1958, and that the Board "suggests carrier defer contemplated changes pending such immediate investigation." At that time, said changes had already been made pursuant to and in accordance with plaintiffs' General Orders Nos. 119 and 120 which became effective at 12.01 A.M. on October 19, 1958.

(j) On November 5, 1958, after investigation by said mediator, the Executive Secretary of the National Mediation Board advised plaintiffs' Assistant General Manager and representatives of said Brotherhoods and Order as follows:

> "Re file C-2827 Missouri-Kansas-Texas Railroad and BLE, BLF&E, ORC&B and BRT concerning carrier's action in abolishing terminal and changing various runs. On basis of mediator's investigation and in view of fact this dispute appears identical with that covered by our case E-56 handled in 1956, National Mediation Board is of opinion that the dispute is not one subject to docketing and mediation under the Act. All concerned are therefore notified that file C-2827 is being closed as of this date."

[fol. 67] Without notice to plaintiffs, a strike of plaintiffs' engineers, firemen, conductors, brakemen, and switchmen, was called by said Brotherhoods and Order and became effective at 6.00 A.M. on November 6, 1958, but was stopped by this Court's temporary restraining order on that date.

(k) Said Case E-56 originated on August 27, 1956, in a strike called for 12.01 A.M. on September 1, 1956, by The Brotherhood of Railroad Trainmen, The Brotherhood of Locomotive Firemen and Enginemen, and The Order of Railway Conductors and Brakemen. At the request of the Board, and during mediation proceedings, said Brotherhoods and Order agreed to withdraw said strike date and plaintiffs agreed to maintain the status quo.

(l) On October 22, 1956, after unsuccessful mediation efforts, the National Mediation Board closed its file in Case E-56.

(m) Said Case E-56 involved the same controversy as that involved in file C-2394 of the National Mediation Board which was commenced on August 11, 1955, when The Brotherhood of Locomotive Engineers, The Brotherhood of Locomotive Firemen and Enginemen, The Brotherhood of Railroad Trainmen, and The Order of Railway Conductors and Brakemen, requested the Board to take jurisdiction.

At the request of the Board, plaintiffs deferred the proposed changes.

(n) On February 10, 1956, after investigation by a mediator of the Board, the Executive Secretary of the National Mediation Board by telegram advised plaintiffs' Assistant General Manager and representatives of said Brotherhoods and Order with respect to the dispute involved in the Board's file C-2394 as follows:

> "Investigation of this file indicates that carrier has complied with Article 10(f) in Conductors and Brakemen's agreement and Article 34 of Engineers agreement by serving notice required under those articles of change in assignment. Investigation further indicates that no formal notices have been served by either party on the other for change in agreement on this subject. Section 2 Seventh and Section 6 of RLA (Railway Labor Act) apply only in situations where notices of changes are served by either party on the other in rates, rules or working conditions as covered by agreements. In absence of such notices this Board fails to find any basis for docketing application for mediation filed by the four organizations."

[fol. 68] And, in response to an inquiry from the President of The Brotherhood of Locomotive Firemen and Enginemen with respect to said advice if February 10, 1956, the Executive Secretary of the National Mediation Board advised the President of said Brotherhood as follows:

> "You state that some question has arisen regarding the authority of this Board to determine whether or not the carrier 'has complied with Article 10(f) of the Conductors' and Brakemen's Agreement and Article 34 of the Engineers' Agreement by serving notice required under those Articles of change in assignment.'
>
> "Our telegram of February 10, 1956 stated only that the Mediator's investigation of this file indicates that the carrier had complied with those articles by the serving of required notices. The question of proper interpretation or application of those articles to the controversy was not touched upon.

"The National Mediation Board has no power under the Railway Labor Act to interpret the provisions of working agreements nor make any determination regarding compliance or non-compliance with such agreements in any particular situation. Such determinations can, of course, be made only by the National Railway Adjustment Board.

"Our telegram was intended to direct attention to the fact that in the absence of notices served by either party on the other for changes in rates, rules or working conditions, no basis exists under Section 2, Seventh, or Section 6 of the Railway Labor Act on which the application filed by the three organizations could be docketed. Any questions involving the proper interpretation or application of agreement rules would come under the jurisdiction of the National Railway Adjustment Board."

(o) In the instant case, neither the plaintiffs nor the defendants, or any of them, have served any notice on the other of any intended change in any agreement affecting rates of pay, rules or working conditions of plaintiffs' engineers, firemen, conductors, brakemen, or switchmen, and neither of plaintiffs has changed the rates of pay, rules, or working conditions of any of its said employees, as a class, as embodied in any agreement, contrary to or in violation of any provision of any agreement.

Said complaint is supplemented by adding thereto paragraph XII reading as follows:

[fol. 69] XII

(a) Though not required so to do, plaintiffs have submitted this controversy to the National Railroad Adjustment Board, First Division. A copy of plaintiffs' submission to that Board is attached hereto, marked "Exhibit A", and made a part hereof.

(b) Though not required so to do, plaintiffs are submitting to the National Committee created by Article 4 of the National Agreement dated May 23, 1952, between railroads

represented by the Eastern, Western and Southeastern Carriers' Conference Committees and engineers, firemen, hostlers and hostler helpers of such carriers represented by The Brotherhood of Locomotive Engineers, the claim of said Brotherhood that plaintiffs violated the provisions of Article 4 of said National Agreement of May 23, 1952, when plaintiffs on October 19, 1958, rearranged way freight service between North Yard (Wichita Falls, Texas) and Forgan, Oklahoma, pursuant to and in accordance with plaintiffs' General Order No. 119 dated October 2, 1958, and when plaintiffs on October 19, 1958, abolished Altus, Oklahoma, and Woodward, Oklahoma, as away-from-home terminals for unassigned crews in through freight service and in lieu thereof established Elk City, Oklahoma, and Forgan, Oklahoma, as away-from-home terminals for such crews pursuant to and in accordance with plaintiffs' General Order No. 120 dated October 2, 1958. A copy of plaintiff ' submission to said National Committee is attached hereto, marked "Exhibit B", and made a part hereof.

(c) Though not required so to do, plaintiffs are submitting to the National Committee created by Article 4 of the National Agreement dated May 23, 1952, between railroads represented by the Eastern, Western and Southeastern Carriers' Conference Committees and firemen, engineers, hostlers and hostler helpers of such carriers represented by The Brotherhood of Locomotive Firemen and Enginemen, the claim of said Brotherhood that plaintiffs violated the provisions of Article 4 of said National Agreement of May 23, 1952, when plaintiffs on October 19, 1958, rearranged way freight service between North Yard (Wichita Falls, Texas) and Forgan, Oklahoma, pursuant to and in accordance with plaintiffs' General Order No. 119 dated October 2, 1958, and when plaintiffs on October 19, 1958, abolished Altus, Oklahoma, and Woodward, Oklahoma, as away-from-home terminals for unassigned crews [fol. 70] in through freight service and in lieu thereof established Elk City, Oklahoma, and Forgan, Oklahoma, as away-from-home terminals for such crews pursuant to and in accordance with plaintiffs' General Order No. 120 dated October 2, 1958. A copy of plaintiffs' submission to said

National Committee is attached hereto, marked "Exhibit C", and made a part hereof.

(d) Though not required so to do, plaintiffs are submitting to the National Committee created by Article 6 of the National Agreement dated May 23, 1952, between railroads represented by the Eastern, Western and Southeastern Carriers' Conference Committees and conductors, trainmen and yardmen of such carriers represented by The Order of Railway Conductors and Brakemen, the claim of said Order that plaintiffs violated the provisions of Article 6 of said National Agreement of May 23, 1952, when plaintiffs on October 19, 1958, rearranged way freight service between North Yard (Wichita Falls, Texas) and Forgan, Oklahoma, pursuant to and in accordance with plaintiffs' General Order No. 119 dated October 2, 1958, and when plaintiffs on October 19, 1958, abolished Altus, Oklahoma, and Woodward, Oklahoma, as away-from-home terminals for unassigned crews in through freight service and in lieu thereof established Elk City, Oklahoma, and Forgan, Oklahoma, as away-from-home terminals for such crews pursuant to and in accordance with plaintiffs' General Order No. 120 dated October 2, 1958. A copy of plaintiffs' submission to said National Committee is attached hereto, marked "Exhibit D", and made a part hereof.

(e) Though not required so to do, plaintiffs are submitting to the Disputes Committee created by Article X of Mediation Agreement Case No. A-5241 dated November 20, 1956, between railroads represented by the Eastern, Western and Southeastern Carriers' Conference Committees and the employees of such carriers represented by The Brotherhood of Locomotive Firemen and Enginemen, the claim of said Brotherhood that plaintiffs violated the provisions of Article VIII (b) of said Mediation Agreement Case No. A-5241, when plaintiffs on October 19, 1958, rearranged way freight service between North Yard (Wichita Falls, Texas) and Forgan, Oklahoma, pursuant to and in accordance with plaintiffs' General Order No. 119 dated October 2, 1958, and when plaintiffs on October 19, 1958, abolished Altus, Oklahoma, and Woodward, Oklahoma, as away-from-home terminals for unassigned crews in through

freight service and in lieu thereof established Elk City, [fol. 71] Oklahoma, and Forgan, Oklahoma, as away-from-home terminals for such crews pursuant to and in accordance with plaintiffs' General Order No. 120 dated October 2, 1958. A copy of plaintiffs' submission to said Disputes Committee is attached hereto, marked "Exhibit E", and made a part hereof.

(f) Though not required so to do, plaintiffs are submitting to the Disputes Committee created by Article X of Mediation Agreement Case No. A-5248 dated April 5, 1957, between railroads represented by the Eastern, Western and Southeastern Carriers' Conference Committees and the employees of such carriers represented by The Brotherhood of Railroad Trainmen, the claim of said Brotherhood that plaintiffs violated the provisions of Article VIII (b) of said Mediation Agreement Case No. A-5248, when plaintiffs on October 19, 1958, rearranged way freight service between North Yard (Wichita Falls, Texas) and Forgan, Oklahoma, pursuant to and in accordance with plaintiffs' General Order No. 119 dated October 2, 1958, and when plaintiffs on October 19, 1958, abolished Altus, Oklahoma, and Woodward, Oklahoma, as away-from-home terminals for unassigned crews in through freight service and in lieu thereof established Elk City, Oklahoma, and Forgan, Oklahoma, as away-from-home terminals for such crews pursuant to and in accordance with plaintiffs' General Order No. 120 dated October 2, 1958. A copy of plaintiffs' submission to said Disputes Committee is attached hereto, marked "Exhibit F", and made a part hereof.

(g) Though not required so to do, plaintiffs are submitting to the Disputes Committee created by Article X of Mediation Agreement Case No. A-5464 dated July 18, 1957, between railroads represented by the Eastern, Western and Southeastern Carriers' Conference Committees and the employees of such carriers represented by The Brotherhood of Locomotive Engineers, the claim of said Brotherhood that plaintiffs violated the provisions of Article VIII (b) of said Mediation Agreement Case No. A-5464, when plaintiffs on October 19, 1958, rearranged way freight service between North Yard (Wichita Falls, Texas) and Forgan, Oklahoma, pursuant to and in accordance with plain-

tiffs' General Order No. 119 dated October 2, 1958, and when plaintiffs on October 19, 1958, abolished Altus, Okla-
[fol. 72] homa, and Woodward, Oklahoma, as away-from-home terminals for unassigned crews in through freight service and in lieu thereof established Elk City, Oklahoma, and Forgan, Oklahoma, as away-from-home terminals for such crews pursuant to and in accordance with plaintiffs' General Order No. 120 dated October 2, 1958. A copy of plaintiffs' submission to said Disputes Committee is attached hereto, marked "Exhibit G", and made a part hereof.

(h) Though not required so to do, plaintiffs are submitting to the Disputes Committee created by Article VII of Mediation Agreement Case No. A-5294 dated June 12, 1957, between railroads represented by the Eastern, Western and Southeastern Carriers' Conference Committees and the employees of such carriers represented by The Order of Railway Conductors and Brakemen, the claim of said Order that plaintiffs violated the provisions of Article V (b) of said Mediation Agreement Case No. A-5294, when plaintiffs on October 19, 1958, rearranged way freight service between North Yard (Wichita Falls, Texas) and Forgan, Oklahoma, pursuant to and in accordance with plaintiffs' General Order No. 119 dated October 2, 1958, and when plaintiffs on October 19, 1958, abolished Altus, Oklahoma, and Woodward, Oklahoma, as away-from-home terminals for unassigned crews in through freight service and in lieu thereof established Elk City, Oklahoma, and Forgan, Oklahoma, as away-from-home terminals for such crews pursuant to and in accordance with plaintiffs' General Order No. 120 dated October 2, 1958. A copy of plaintiffs' submission to said Disputes Committee is attached hereto, marked "Exhibit H", and made a part hereof.

Wherefore, plaintiffs pray as in their original complaint.

W. A. Thie, M. E. Clinton, M. W. Reeves, Barrett Building, Denison, Texas;

O. O. Touchstone, 405 Southland Life Building, Dallas 1, Texas,

Attorneys for Plaintiffs.

[fol. 73] *Duly sworn to by A. F. Winkel, jurat omitted in printing.*

[fol. 74]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

Civil Action No. 8061

[Title omitted]

AFFIDAVIT OF A. F. WINKEL—Filed December 18, 1958

The State of Texas)
County of Dallas)

Before me, the undersigned authority, on this day personally appeared A. F. Winkel who, after being by me first duly sworn, upon his oath did depose and say:

I am Assistant General Manager of Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, plaintiffs in Civil Action No. 8061 now pending in the District Court of the United States for the Northern District of Texas, Dallas Division. I have held such position for more than ten years and prior thereto I held various positions with said Railroad Companies for more than thirty years.

Among other duties as said Assistant General Manager, I am head of the Personnel Department of said Railroad Companies and I am in charge of and am responsible for all labor relations of said Railroad Companies.

The Brotherhood of Locomotive Engineers, The Brotherhood of Locomotive Firemen and Enginemen, The Brotherhood of Railroad Trainmen, and The Order of Railway Conductors and Brakemen, defendants in said Civil Action No. 8061, without notice to said Railroad Companies, ordered the employees of said Railroad Companies who are represented by said Brotherhoods and Order, namely, said Railroad Companies' engineers, firemen, conductors, brakemen, and switchmen, to strike and to cease work for said Railroad Companies at 6.00 o'clock A. M. on Novem-
[fol. 75] ber 6, 1958. All of said employees did strike and cease work for said Railroad Companies at such time except those who were then manning trains between terminals

and they did strike and cease work for said Railroad Companies on said date as soon as they reached such terminals.

Said strike of said employees completely paralyzed all train operations of said Railroad Companies over 2919 miles of track extending from St. Louis and Kansas City, Missouri, on the north to Oklahoma City, Oklahoma, and to Houston and San Antonio, Texas, on the south. It also completely paralyzed all yard operations of said Railroad Companies and all of their switching service to industries at and between those points.

Said strike stopped the rail transportation of United States mail by said Railroad Companies; it stopped the transportation by said Railroad Companies of passengers and freight in interstate commerce and in intrastate commerce; it stopped switching service by said Railroad Companies to more than 3600 industries which are served exclusively by them; it stopped switching service by said Railroad Companies to more than 1300 industries which are served by said Railroad Companies and other railroads; it stopped switching service by said Railroad Companies to hundreds of team tracks and freight stations serving thousands of industries; and it stopped the interchange of cars between plaintiffs and many other railroads at hundreds of interchange points.

Said strike was stopped by the temporary restraining order issued on November 6, 1958, by the District Court of the United States for the Northern District of Texas in Civil Action No. 8061 pending in the Dallas Division.

If said strike should be resumed, the operations of said Railroad Companies above described will again be stopped; said Railroad Companies will be compelled to close more than 500 stations now serving cities, towns and communities in the States of Missouri, Kansas, Oklahoma, and Texas; said Railroad Companies will be prevented from transporting more than 900 cars, and 37,000 tons of freight daily; said Railroad Companies will be compelled to lay off approximately 2100 employees, with average daily earnings totaling $33,600.00, in addition to approximately 1100 employes on strike; said Railroad Companies will be immediately deprived of revenues in excess of $160,000.00 per day, thereby jeopardizing the ability of said Companies to

meet their mortgage and equipment obligations approximating $10,000.00 per day.

[fol. 76] During the year 1957, said Railroad Companies transported 307,245 passengers and 376,287 cars and 13,531,941 tons of freight. During the first six months of 1958, said Railroad Companies transported 88,515 passengers and 163,947 cars and 6,082,873 tons of freight. During the first six months of 1958, the revenues of said Railroad Companies were derived from the following sources: passengers, $772,000.00; United States mail, express and miscellaneous, $3,383,130.00; freight, $31,047,641.00; total, $35,202,771.00. During the year 1957, the revenues of said Railroad Companies were divided as follows: passengers, $2,150,431.00; United States mail, express and miscellaneous, $6,463,064.00; freight, $57,954,307.00; total, $66,567,801.00. Of the total revenue of $66,567,801.00 earned in 1957 by said Railroad Companies, $11,258,954.00 was derived from the transportation of intrastate commerce, divided by states as follows: Missouri, $1,495,495.00; Kansas, $486,956.00; Oklahoma, $1,260,014.00; Texas, $8,016,489.00. The remaining revenues of $55,308,847.00 for the year 1957 were derived from the transportation of United States mail, express, passengers and freight in interstate commerce to, from, and between the States of Missouri, Kansas, Oklahoma, and Texas, and between those States and practically every other State in the United States.

The mortgage and equipment obligations of said Railroad Companies totaled $3,798,906.00 for the year 1957 and $2,220,344.00 for the first six months of year 1958.

The lines of railroad involved in said Civil Action No. 8061 are shown in red on the map, marked "Exhibit 1", attached to and made a part of this affidavit. The portion thereof between Wichita Falls, Texas, (North Yard) and Forgan, Oklahoma, over which this controversy arose, is emphasized by paralleling green lines. This line, 302 miles in length, is the Western Subdivision of the Southern Division of said Railroad Companies' lines of railroad.

This 302-mile line now constitutes and always has constituted a separate seniority district for said Railroad Companies' engineers, firemen, conductors and brakemen, and each of such employees holding seniority on such dis-

trict now has and always has had the right to exercise such seniority anywhere on such district and to perform any needed service over all or any part of said district to which he is or was entitled by virtue of such seniority.

Prior to October 19, 1958, way freight crews on this line were assigned as follows:

> [fol. 77] Two crews between North Yard (Wichita Falls, Texas) and Welon (Altus, Oklahoma), a distance of 75.9 miles, daily except Sunday, with North Yard the home terminal for both crews, and with Sunday layover at North Yard for one crew and at Welon for the other crew.
>
> One crew from Welon (Altus, Oklahoma) to Elk City, Oklahoma, and return, a distance of 58.3 miles in each direction, daily except Saturday, with Welon the home terminal and with Saturday layover at Welon;
>
> One crew from Elk City, Oklahoma, to Guest (Woodward, Oklahoma), a distance of 84.8 miles, on Mondays, Wednesdays and Fridays, and from Guest to Elk City on Tuesdays, Thursdays and Saturdays, with Elk City the home terminal and with Sunday layover at Elk City; and
>
> One crew from Guest (Woodward, Oklahoma) to Forgan, Oklahoma, a distance of 83.2 miles, on Mondays, Wednesdays and Fridays, and from Forgan to Guest on Tuesdays, Thursdays and Saturdays, with Guest the home terminal and with Sunday layover at Guest.

Such way freight assignments, or similar way freight assignments between North Yard (Wichita Falls, Texas) and Forgan, Oklahoma, have been in existence for more than twenty-five years.

Effective at 12.01 A. M. on October 19, 1958, said Railroad Companies rearranged assigned way freight service between North Yard (Wichita Falls, Texas) and Forgan, Oklahoma, as follows:

> Assigned two wayfreight crews to operate between North Yard (Wichita Falls, Texas) and Elk City, Okla-

homa, a distance of 134.2 miles, daily except Sunday, with North Yard the home terminal of both crews, and with Sunday layover at North Yard for one crew and at Elk City for the other; and

Assigned one wayfreight crew to operate from Elk City, Oklahoma to Forgan, Oklahoma, a distance of 168 miles, on Mondays, Wednesdays and Fridays, and from Forgan to Elk City on Tuesdays, Thursdays and Saturdays, with Elk City the home terminal and with Sunday layover at Elk City.

This rearrangement of way freight service was made in accordance with General Order No. 119 of said Railroad Companies dated October 2, 1958, a copy of which, marked "Exhibit 2", is attached to and made a part of this affidavit.

Prior to October 19, 1958, North Yard (Wichita Falls, Texas) was the home terminal and Altus, Oklahoma, and Forgan, Oklahoma, were the bulletined away-from-home terminals for unassigned crews in through freight service between North Yard (Wichita Falls, Texas) and Forgan, Oklahoma. Effective at 12.01 A. M. on October 19, 1958, said Railroad Companies abolished Altus, Oklahoma, and Woodward, Oklahoma, as away-from-home terminals for unassigned crews in through freight service, established Elk City, Oklahoma, as an away-from-home terminal for [fol. 78] such crews, leaving North Yard (Wichita Falls, Texas) as the home terminal and Forgan, Oklahoma, as an away-from-home terminal for such crews. This change in away-from-home terminals was made in accordance with General Order No. 120 of said Railroad Companies dated October 2, 1958, a copy of which, marked "Exhibit 3", is attached to and made a part of this affidavit.

North Yard (Wichita Falls, Texas) now is and always has been the home terminal for unassigned crews in through freight service between North Yard and Forgan, Oklahoma, and North Yard (Wichita Falls, Texas) now is and always has been the only point where an extra board has been maintained for way freight crews and unassigned through freight crews operating between North Yard (Wichita Falls, Texas) and Forgan, Oklahoma.

Assigned way freight crews now handle, and they always have handled, all of the traffic between North Yard (Wichita Falls, Texas) and Forgan, Oklahoma, except, during the grain seasons in May and June of each year, unassigned crews in through freight service are called as needed to handle the overflow wheat which cannot be handled by way freight crews, and, when so called, unassigned through freight crews operate over all or any portion of the line without changing crews except in rare instances where an available crew is used out of an away-from-home terminal under the first-in first-out rule.

This line has been recently dieselized. Prior thereto all traffic was handled by steam locomotives which were capable of only short runs, making it necessary to have more terminals. This resulted in considerable terminal delays to through traffic because the requirements of local service made it impossible to arrange through connecting schedules. These delays resulted in the loss of traffic, principally through diversion to trucks. To overcome such losses, it was necessary to expedite the movement of traffic by extending runs and reducing the number of terminals, thereby eliminating all unnecessary terminal delays. This was made possible through the use of diesel power. These were the changes made effective on October 19, 1958.

There is no provision in any agreement between said Railroad Companies and said Brotherhoods and Order, or any of them, which prohibited said Railroad Companies from making such changes. On the contrary, such changes were authorized by the following provisions of agreements with said Brotherhoods and Order, viz:

[fol. 79] Agreement with
The Brotherhood of Locomotive Engineers
(Effective October 1, 1918)

"Article 34"

"The rights to regular engines, also the right and preference to regular runs will be governed by seniority in service on the respective districts to which engineers may be assigned.

"No freight run or yard engine of less than six days per week will be considered for regular assignment and engineers on all such assignments will be paid for all work days not used. *Five days' notice will be given before* road service of this kind is inaugurated or *terminal is changed.* It is understood that fixture switch engineers hold seniority only in yard service." (page 29) (Affiant's italics)

"Article 35"

"Should service be reduced, preference of runs will be governed by seniority on the respective district; when any run is created or vacant on district, the senior engineer on such district will have the right to such run. Should he decline to accept it, or fail to ask for it within ten days, after such vacancy occurs, he will forfeit his right to such run until it again becomes vacant, and it will be open to each engineer who is younger in service in accordance with above provisions.

"*A run will be vacant when terminal is changed to the extent of two miles or more* or when vacated by the engineer holding it, or when the regular time or mileage is changed as much as four hours." (page 30) (Affiant's italics)

"Article 11"

"Held Away-From-Home Terminal"
(As amended by National Agreement dated August 11, 1948—page 15)

"(a) Engineers in pool freight and in unassigned service held at other than home terminal will be paid continuous time for all time so held after the expiration of sixteen hours from the time relieved from previous duty, at the regular rate per hour paid them for the last service performed. If held sixteen hours after the expiration of the first twenty-four hour period, they will be paid continuous time for the time so held during the next succeeding eight hours, or until the end of the second twenty-four hour period, and similarly for each twenty-four hour period thereafter.

"(b) Should an engineer be called for service or ordered to deadhead after pay begins, the held-away-from-home terminal time shall cease at the time pay begins for such service or, when deadheading, at the time the train leaves the terminal, except that in no event shall there be duplication of payment for deadhead time and held-away-from-home terminal time.

"(c) Payments accruing under this rule shall be paid for separate and apart from pay for the subsequent service or deadheading.

"(d) For the purpose of applying this rule, the *railroad will designate a home terminal* for each crew in pool freight and in unassigned service." (Affiant's italics)

Agreement with
The Brotherhood of Locomotive Firemen
and Enginemen
(Effective October 1, 1918, with revisions to
November 1, 1957)

"Article 40"

"(a) When any run is created or vacant on a district, the senior fireman on such District will have the right [fol. 80] to such run. Should he fail to make application or bid for such run within five days after such vacancy is posted, except in the case of sickness or absence, he will forfeit his right to such run until it again becomes vacant, and it will be opened to each firemen who is younger in service in accordance with the above provisions, provided, that when a fireman exercises the privilege of taking a run created or made vacant during his sickness or absence, the run will not otherwise be reopened.

"(b) *A run will be considered vacant when terminal is changed to the extent of two or more miles,* or when vacated by the firemen holding it, or when the time or mileage is changed to the extent of 10 per cent, or when

the lay over is changed as much as four hours. This last provision not to apply to yard engines." (page 40) (Affiant's italics)

"Article 11"

"Held Away From Home Terminal"

"(a) (National Agreement, August 11, 1948) Firemen, and helpers on other than steam power, in pool freight and in unassigned service held at other than home terminal will be paid continuous time for all time so held after the expiration of sixteen hours from the time relieved from previous duty, at the regular rate per hour paid them for the last service performed. If held sixteen hours after the expiration of the first twenty-four hour period, they will be paid continuous time for the time so held during the next succeeding eight hours, or until the end of the second twenty-four hour period, and similarly for each twenty-four hour period thereafter.

"(b) Should firemen, or helper on other than steam power, be called for service or ordered to deadhead after pay begins, the held-away-from-home terminal time shall cease at the time pay begins for such service or, when deadheading, at the time the train leaves the terminal except that in no event shall there be duplication of payment for deadhead time and held-away-from-home terminal time.

"(c) Payments accruing under this rule shall be paid for separate and apart from pay for the subsequent service or deadheading.

"(d) For the purpose of applying this rule, *the railroad will designate a home terminal* for each crew in pool freight and in unassigned service." (page 17) (Affiant's italics)

Agreement with
The Brotherhood of Railroad Trainmen and The Order of Railway Conductors and Brakemen
(Effective November 1, 1929, with revisions to April 1, 1954)

"Article 10"

"Wayfreight and Mixed Train Service"
"Rates of pay effective December 16, 1953"

* * * * *

"(f) No changes will be made in the above runs (between Wichita Falls and Forgan), nor number of crews assigned to them, unless business or changed conditions justify it, nor will terminals be changed, or runs rearranged, without ten (10) days' notice * * *" (page 15)

"Article 45"

* * * * *

"(e) Seniority will govern the preference of assignment in service, provided that senior trainmen declining closed runs will forfeit their rights to same until [fol. 81] vacancies occur, except in reducing the force, the youngest man will be reduced from the service.

* * * * *

"(g) Trainmen holding closed runs who are displaced by their seniors or whose runs have been abolished, will have the right within ten (10) days to displace any junior man.

* * * * *

"(i) The following shall be known as closed runs: *Wayfreight and mixed runs,* assigned work trains, pilots assigned to helper engines, also passenger runs that are located away from division terminals, regular runs on the G. H. & H. and any other runs located away from a district terminal, *and shall be advertised for a period of ten (10) days.*" (page 39) (Affiant's italics)

* * * * *

Freight Service Rulings

(Appendix to BRT and ORC&B Agreement)

• • • • •

"(h) When closed runs are thrown open for advertisement due to changed conditions, etc., the regular conductor and brakeman holding such run at that time will be permitted to hold run during advertisement.

"(i) It is agreed that when a terminal is changed for a closed run or a run changed from day to night, such run will be advertised."

"Article 34"

"Conductors and Trainmen in pool freight and in unassigned service held at other than home terminal will be paid on the minute basis for the actual time so held after the expiration of sixteen hours from the time relieved from previous duty at a rate per hour of 1/8th of the daily rate paid them for the last service performed. If held sixteen hours after the expiration of the first twenty-four hour period from the time relieved, they will be paid for the actual time so held during the next succeeding eight hours, or until the end of the second twenty-four hour period, and similarly for each twenty-four hour period thereafter.

"Should a Conductor or Trainman be called for service or ordered to deadhead after pay begins, held away from home terminal time shall cease at the time pay begins for such service or deadheading.

"Payments accruing under this rule shall be paid for separate and apart from pay for the subsequent service or deadheading.

"For the purpose of applying this rule *the railroad will* designate a home terminal for each crew in pool freight and in unassigned service." (page 30) (Affiant's italics)

On October 7, 1958, representatives of said Brotherhoods and Order requested the Railroad Companies to cancel said General Order No. 119 and said General Order No. 120 and

on the same date said Railroad Companies denied such request.

[fol. 82] On October 14, 1958, the Executive Secretary of the National Mediation Board advised affiant that said Brotherhoods and Order had requested the services of the Board "in dispute with MKT Railroad over abolishing established terminals and changing intradivisional service contrary to provisions of Article 4 of BLE, BLF&E, and CRC&B May 23, 1952 and Article 6 May 25, 1951 National Agreements." Said agreements are more fully described in paragraph IX of the complaint of said Railroad Companies in said Civil Action No. 8061.

On October 20, 1958, the Executive Secretary of the National Mediation Board advised affiant and representatives of said Brotherhoods and Order that said application of said Brotherhoods and Order for the services of the Board has been given the Board's file G-2827 and that one of the Board's mediators then in Dallas, Texas, would commence an investigation on October 21, 1958, and that the Board "suggests carrier defer contemplated changes pending such immediate investigation." At that time, said changes had already been made pursuant to and in accordance with said Railroad Companies' General Orders Nos. 119 and 120 which became effective at 12.01 A. M. on October 19, 1958.

On November 5, 1958, after investigation by said mediator, the Executive Secretary of the National Mediation Board advised affiant and representatives of said Brotherhoods and Order as follows:

> "Re file C-2827 Missouri-Kansas-Texas Railroad and BLE, BLF&E, CRC&B and BRT concerning carrier's action in abolishing terminal and changing various runs. On basis of mediator's investigation and in view of fact this dispute appears identical with that covered by our case E-56 handled in 1956, National Mediation Board is of opinion that the dispute is not one subject to docketing and mediation under the Act. All concerned are therefore notified that file C-2827 is being closed as of this date."

Without notice to said Railroad Companies, a strike of their engineers, firemen, conductors, brakemen, and switch-

men was called by said Brotherhoods and Order and became effective at 6.00 o'clock A. M. on November 6, 1958, but was stopped by a temporary restraining order issued on that date by the District Court of the United States for the Northern District of Texas.

[fol. 83] Said Case E-56 originated on August 27, 1956, in a strike called for 12.01 A. M. on September 1, 1956, by The Brotherhood of Railroad Trainmen, The Brotherhood of Locomotive Firemen and Enginemen, and The Order of Railway Conductors and Brakemen. At the request of the Board, and during mediation proceedings, said Brotherhoods and Order agreed to withdraw said strike date and plaintiffs agreed to maintain the status quo.

On October 22, 1956, after unsuccessful mediation efforts, the National Mediation Board closed its file in Case E-56.

Said Case E-56 involved the same controversy as that involved in file C-2394 of the National Mediation Board which was commenced on August 11, 1955, when The Brotherhood of Locomotive Engineers, The Brotherhood of Locomotive Firemen and Enginemen, The Brotherhood of Railroad Trainmen, and The Order of Railway Conductors and Brakemen, requested the Board to take jurisdiction. At the request of the Board, said Railroad Companies deferred the proposed changes.

On February 10, 1956, after investigation by a mediator of the Board, the Executive Secretary of the National Mediation Board by telegram advised affiant and representatives of said Brotherhoods and Order with respect to the dispute involved in the Board's file C-2394 as follows:

> "Investigation of this file indicates that carrier has complied with Article 10(f) in Conductors and Brakemen's agreement and Article 34 of Engineers agreement by serving notice required under those articles of change in assignment. Investigation further indicates that no formal notices have been served by either party on the other for change in agreement on this subject. Section 2 Seventh and Section 6 of RLA (Railway Labor Act) apply only in situations where notices of changes are served by either party on the other in rates, rules or working conditions as covered

by agreements. In absence of such notices this Board fails to find any basis for docketing application for mediation filed by the four organizations."

[fol. 84] And, in response to an inquiry from the President of The Brotherhood of Locomotive Firemen and Enginemen with respect to said advice of February 10, 1956, the Executive Secretary of the National Mediation Board by letter dated February 29, 1956, advised the President of said Brotherhood as follows:

"You state that some question has arisen regarding the authority of this Board to determine whether or not the carrier 'has complied with Article 10(f) of the Conductors' and Brakemen's Agreement and Article 34 of the Engineers' Agreement by serving notice required under those Articles of change in assignment.'

"Our telegram of February 10, 1956 stated only that the Mediator's investigation of this file indicates that the carrier had complied with those articles by the serving of required notices. The question of proper interpretation or application of those articles to the controversy was not touched upon.

"The National Mediation Board has no power under the Railway Labor Act to interpret the provisions of working agreements nor make any determination regarding compliance or non-compliance with such agreements in any particular situation. Such determinations can, of course, be made only by the National Railway Adjustment Board.

"Our telegram was intended to direct attention to the fact that in the absence of notices served by either party on the other for changes in rates, rules or working conditions, no basis exists under Section 2, Seventh, or Section 6 of the Railway Labor Act on which the application filed by the three organizations could be docketed. Any questions involving the proper interpretation or application of agreement rules would come under the jurisdiction of the National Railway Adjustment Board."

Neither the Railroad Companies nor the defendants, or any of them, have served any notice on the other of any intended change in any agreement affecting rates of pay, rules or working conditions or said Railroad Companies' conductors, brakemen, or switchmen.

Said Brotherhoods and Order now contend that said Railroad Companies, in making said changes on October 19, 1958, pursuant to their General Orders Nos. 119 and 120—

Violated Articles 34 and 52 of the agreement effective October 1, 1918, as amended, between said Railroad Companies and The Brotherhood of Locomotive Engineers;

Violated Articles 10, 11, 59 and 60 of the agreement effective November 1, 1929, as amended and revised, between said Railroad Companies, The Brotherhood of Railroad Trainmen, and The Order of Railway Conductors and Brakemen;

Violated Article 6 of a National Agreement dated May 23, 1952, between The Order of Railway Conductors (now The Order of Railway Conductors and Brakemen), and representatives of numerous railroad companies, including said Railroad Companies;

[fol. 85] Violated Article 4 of a National Agreement dated May 23, 1952, between the Brotherhood of Locomotive Engineers and representatives of numerous railroad companies, including said Railroad Companies;

Violated Article 4 of a National Agreement dated May 23, 1952, between The Brotherhood of Locomotive Firemen and Enginemen, and representatives of numerous railroad companies, including said Railroad Companies;

Violated Article VIII (b) of Mediation Agreement Case No. A-5464 dated July 18, 1957, between The Brotherhood of Locomotive Engineers and representatives of numerous railroad companies, including said Railroad Companies;

Violated Article VIII (b) of Mediation Agreement Case No. A-5241 dated November 20, 1956, between The Brotherhood of Locomotive Firemen and Enginemen and representatives of numerous railroad companies, including said Railroad Companies;

Violated Article VIII (b) of Mediation Agreement Case No. A-5248 dated April 5, 1957, between The Brotherhood of Railroad Trainmen and representatives of numerous railroad companies, including said Railroad Companies;

Violated Article V (b) of Mediation Agreement Case No. A-5294 dated June 12, 1957, between The Order of Railway Conductors and Brakemen and representatives of numerous railroad companies, including said Railroad Companies;

Article 6 of the National Agreement dated May 23, 1952, between The Order of Railway Conductors (now The Order of Railway Conductors and Brakemen) and representatives of numerous railroad companies, became an agreement on August 1, 1952 between said Order and Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, but said agreement was cancelled in the year 1954 when said Order and said Railroad Companies agreed upon a reprint of their agreements and agreed (1) not to reproduce the provisions of Article 6 of said National Agreement dated May 23, 1952, (2) that said provisions were rejected, and (3) that existing rules or practices were preserved. This is clearly shown by correspondence between the parties and by the 1954 revision of the appendix to the agreement between said Railroad Companies, The Brotherhood of Railroad Trainmen, and The Order of Railway Conductors (now The Order of Railway Conductors and Brakemen), viz:

Letter dated March 1, 1954, addressed by C. L. Flanery to A. F. Winkel, asking for a conference during the week of March 22, 1954, concerning a revision of said agreement.

Letter dated March 4, 1954, addressed by A. F. Winkel to W. D. Johnson and C. L. Flanery, setting a con-

ference for 10:00 A. M., on March 25, 1954, with respect to a revision of said agreement.

[fol. 86] Letter dated September 17, 1954, addressed by A. F. Winkel to W. D. Johnson and C. L. Flanery, enclosing to each of them thirty printer's galley proofs of said revised agreement and appendix, including revisions agreed upon between representatives of the parties in conference;

Letter dated November 15, 1954, addressed by C. L. Flanery to A. F. Winkel, acknowledging A. F. Winkel's letter of September 17 and enclosure, indicating some changes which should be made on the galley proofs (but none affecting Article 6 of said National Agreement dated May 23, 1952), and stating that C. L. Flanery was agreeable to printing at the earliest possible time;

Letter dated November 16, 1954, addressed by W. D. Johnson to A. F. Winkel, acknowledging A. F. Winkel's letter of September 17 and enclosure, and indicating an addition which should be made to Article 44 of said agreement; and

Letter dated December 29, 1954, addressed by W. D. Johnson to A. F. Winkel, agreeing to A. F. Winkel's suggested revision of the note to Article 44 of said agreement and stating "it will be agreeable to reprint the schedule in that manner".

Copies of said letters marked Exhibits 4 to 9, respectively, are attached to and made a part of this affidavit.

On galley proofs 17 to 19, inclusive, attached to said letter of A. F. Winkel dated September 17, 1954, there was reproduced those portions of said National Agreement dated May 23, 1952, which remained agreements between the Railroad Companies and The Order of Railway Conductors, and on such proofs appropriate references were made to those portions of said National Agreement which were no longer agreements between said Railroad Companies and The Order of Railway Conductors. On galley proof 18, the following appears:

"ARTICLE 6

Interdivisional, Interseniority District, Intradivisional, and/or Intraseniority District Service (Freight or Passenger)

(Not reproduced—Rejected and existing rules or practices preserved.)"

This identical language now appears on page 76 of the appendix to the said agreement as revised to April 1, 1954.

Said Railroad Companies have submitted this entire controversy, including all claims of said Brotherhoods and Order, to the National Railroad Adjustment Board, First Division.

[fol. 87] Said Railroad Companies have submitted to the National Committee created by Article 4 of the National Agreement dated May 23, 1952, between railroads represented by the Eastern, Western and Southeastern Carriers' Conference Committees and engineers, firemen, hostlers and hostler helpers of such carriers represented by The Brotherhood of Locomotive Engineers, the claim of said Brotherhood that said Railroad Companies violated the provisions of Article 4 of said National Agreement of May 23, 1952, when said Railroad Companies on October 19, 1958, rearranged way freight service between North Yard (Wichita Falls, Texas) and Forgan, Oklahoma, pursuant to and in accordance with said Railroad Companies' General Order No. 119 dated October 2, 1958, and when said Railroad Companies on October 19, 1958, abolished Altus, Oklahoma, and Woodward, Oklahoma, as away-from-home terminals for unassigned crews in through freight service, established Elk City, Oklahoma, as an away-from-home terminal and continued Forgan, Oklahoma, as an away-from-home terminal for such crews pursuant to and in accordance with said Railroad Companies' General Order No. 120 dated October 2, 1958.

Said Railroad Companies have submitted to the National Committee created by Article 4 of the National Agreement dated May 23, 1952, between railroads represented by the Eastern, Western and Southeastern Carriers' Conference Committees and firemen, engineers, hostlers and hostler

helpers of such carriers represented by The Brotherhood of Locomotive Firemen and Enginemen, the claim of said Brotherhood that said Railroad Companies violated the provisions of Article 4 of said National Agreement of May 23, 1952, when said Railroad Companies made said changes pursuant to their General Orders Nos. 119 and 120.

Said Railroad Companies have submitted to the National Committee created by Article 6 of the National Agreement dated May 23, 1952, between railroads represented by the Eastern, Western and Southeastern Carriers' Conference Committees and conductors, trainmen and yardmen of such carriers represented by The Order of Railway Conductors and Brakemen, the claim of said Order that said Railroad Companies violated the provisions of Article 6 of said National Agreement of May 23, 1952, when said Railroad Companies made said changes pursuant to their General Orders Nos. 119 and 120, but said submission was made subject to the position of said Railroad Companies that the provisions of said Article 6 did not constitute an agreement between said Order and said Railroad Companies on October 19, 1958, and that said provisions do not now constitute an agreement between those parties.

[fol. 88] Said Railroad Companies have submitted to the Disputes Committee created by Article X of Mediation Agreement Case No. A-5241 dated November 20, 1956, between railroads represented by the Eastern, Western and Southeastern Carriers' Conference Committees and the employees of such carriers represented by The Brotherhood of Locomotive Firemen and Enginemen, the claim of said Brotherhood that said Railroad Companies violated the provisions of Article VIII (b) of said Mediation Agreement Case No. A-5241, when said Railroad Companies made said changes pursuant to their General Orders Nos. 119 and 120.

Said Railroad Companies have submitted to the Disputes Committee created by Article X of Mediation Agreement Case No. A-5248 dated April 5, 1957, between railroads represented by the Eastern, Western and Southeastern Carriers' Conference Committees and the employees of such carriers represented by The Brotherhood of Railroad Trainmen, the claim of said Brotherhood that said Rail-

road Companies violated the provisions of Article VIII (b) of said Mediation Agreement Case No. A-5248 when said Railroad Companies made said changes pursuant to their General Orders Nos. 119 and 120.

Said Railroad Companies have submitted to the Disputes Committee created by Article X of Mediation Agreement Case No. A-5464 dated July 18, 1957, between railroads represented by the Eastern, Western and Southeastern Carriers' Conference Committees and the employees of such carriers represented by The Brotherhood of Locomotive Engineers, the claim of said Brotherhood that said Railroad Companies violated the provisions of Article VIII (b) of said Mediation Agreement Case No. A-5464, when said Railroad Companies made said changes pursuant to their General Orders Nos. 119 and 120.

Said Railroad Companies have submitted to the Disputes Committee created by Article VII of Mediation Agreement Case No. A-5294 dated June 12, 1957, between railroads represented by the Eastern, Western and Southeastern Carriers' Conference Committees and the employees of such carriers represented by The Order of Railway Conductors and Brakemen, the claim of said Order that said Railroad Companies violated the provisions of Article V (b) of said Mediation Agreement Case No. A-5294, when said Railroad Companies made said changes pursuant to their General Orders Nos. 119 and 120.

Said Railroad Companies have submitted to the National Mediation Board the claims of said Brotherhoods and Order that said Railroad Companies violated the provisions of Article VIII (b) of said Mediation Agreement Case No. A-5241 dated November 20, 1956, the provisions of Article VIII (b) of said Mediation Agreement Case [fol. 89] No. A-5248 dated April 5, 1957, the provisions of Article VIII (b) of said Mediation Agreement Case No. A-5464 dated July 18, 1957, and the provisions of Article V (b) of said Mediation Agreement Case No. A-5294 dated June 12, 1957, when said Railroad Companies made said changes pursuant to their General Orders Nos. 119 and 120.

Said Railroad Companies have submitted to the National Mediation Board the claims of The Brotherhood of Loco-

motive Engineers, The Brotherhood of Locomotive Firemen and Enginemen, and The Order of Railway Conductors and Brakemen, that said Railroad Companies violated the provisions of Article 4 of said National Agreement of May 23, 1952, with The Brotherhood of Locomotive Engineers, the provisions of Article 4 of said National Agreement of May 23, 1952, with The Brotherhood of Locomotive Firemen and Enginemen, and the provisions of Article 6 of said National Agreement of May 23, 1952, with The Order of Railway Conductors (now The Order of Railway Conductors and Brakemen) when said Railroad Companies made said changes pursuant to their General Orders Nos. 119 and 120, but said submission with respect to the provisions of Article 6 of said National Agreement of May 23, 1952, with The Order of Railway Conductors (now The Order of Railway Conductors and Brakemen) was made subject to the position of said Railroad Companies that the provisions of said Article 6 did not constitute an agreement between said Order and said Railroad Companies on October 19, 1958, and that said provisions do not now constitute an agreement between those parties.

Copies of said submissions, marked Exhibits A to J, respectively, are attached to and made a part of Railroad Companies' amendment and supplement to their original complaint, as supplemented.

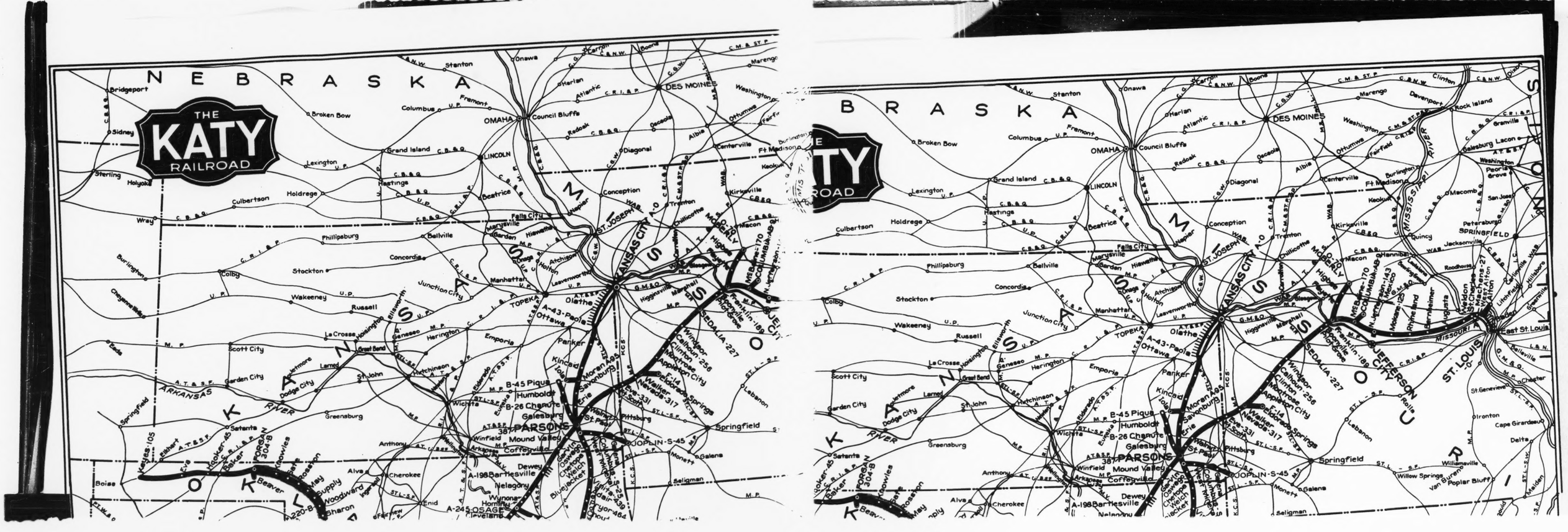
A. F. Winkel

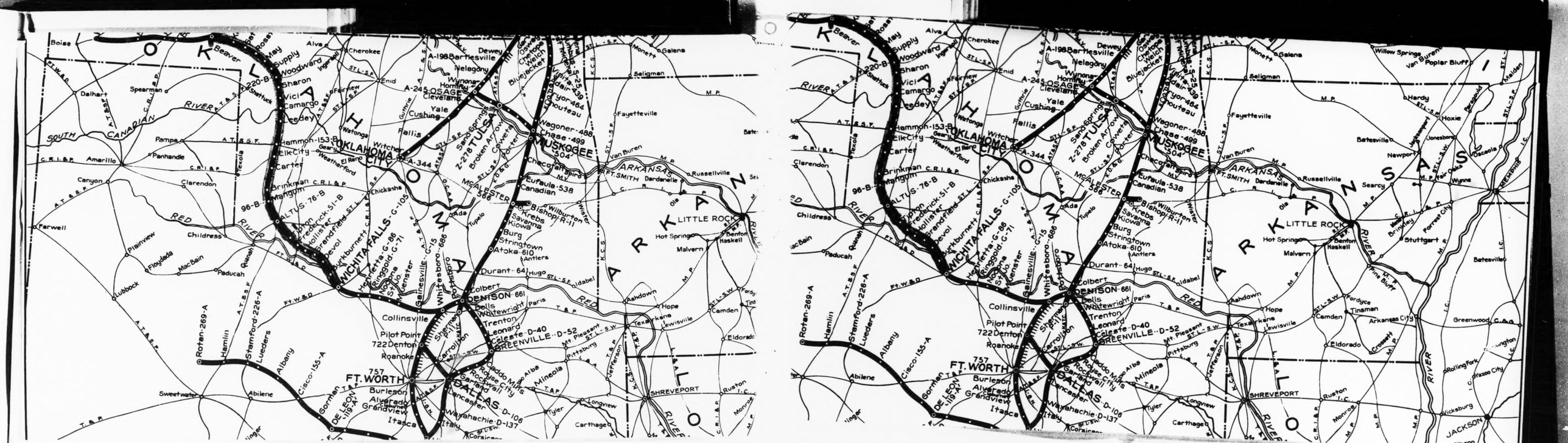
Subscribed and sworn to before me this 17th day of December, 1958.

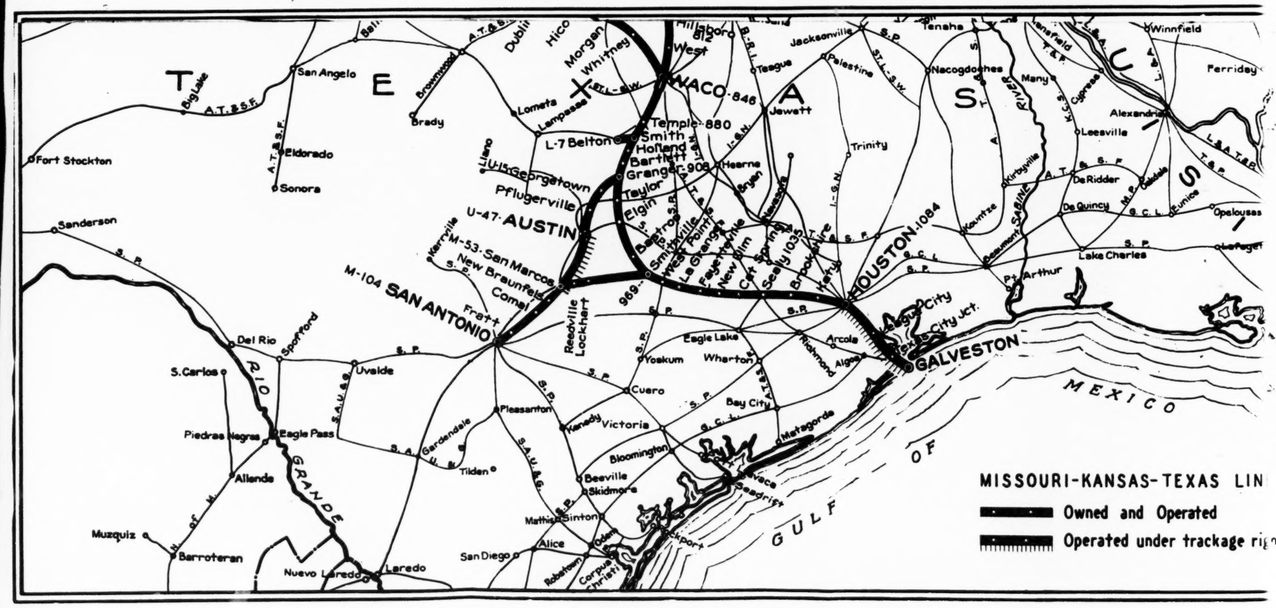
W. B. Lowe Jr., Notary Public, Dallas County, Texas.

[fol. 90] EXHIBIT 1 TO AFFIDAVIT

(See Opposite) ☞


THE KATY RAILROAD
NEBRASKA
OKLAHOMA
KANSAS
MISSOURI
ARKANSAS RIVER
MISSISSIPPI RIVER
OMAHA
Council Bridges
DES MOINES
LINCOLN
ST. JOSEPH
KANSAS CITY
TOPEKA
SEDALIA-227
JEFFERSON CITY
COLUMBIA-63
SPRINGFIELD
ST. LOUIS
East St. Louis
PARSONS
JOPLIN-S-45
Springfield
Wichita
Enid
Oklahoma City
Tulsa
Fort Smith
Little Rock
Memphis
Cape Girardeau
Poplar Bluff
Willow Springs
Chester
Belleville
Hillsboro
Granville
Galesburg
Peoria
Rock Island
Davenport
Clinton
Marengo
Grand Island
Lincoln
Beatrice
Hastings
Kearney
Holdrege
Culbertson
McCook
Wray
Sterling
Holyoke
Sidney
Bridgeport
Broken Bow
Columbus
Fremont
Stanton
Onawa
Harlan
Atlantic
Diagonal
Redoak
Decatur
Albia
Centerville
Ottumwa
Fairfield
Washington
Ft. Madison
Burlington
Keokuk
Kirksville
Trenton
Chillicothe
Brookfield
Macon
Hannibal
Quincy
Jacksonville
Roodhouse
Carrollton
Alton
Granite City
Litchfield
Hillsboro
Centralia
Effingham
Mattoon
Charleston
Paris
Terre Haute
Indianapolis
Lafayette
Logansport
Peru
Fort Wayne
Chicago
Gary
Michigan City
Kankakee
Joliet
Aurora
Rockford
Freeport
Dubuque
Clinton
Davenport
Rock Island
Moline
Galesburg
Peoria
Bloomington
Decatur
Springfield
Jacksonville
Quincy
Hannibal
Mexico
Moberly
Columbia
Jefferson City
Sedalia
Warrensburg
Lexington
Independence
Kansas City
St. Joseph
Atchison
Leavenworth
Topeka
Manhattan
Junction City
Salina
Ellsworth
Hutchinson
Wichita
Arkansas City
Winfield
Coffeyville
Parsons
Pittsburg
Joplin
Monett
Galena
Seligman
Springfield
Lebanon
Rolla
St. Genevieve
Ironton
Cape Girardeau
Delta
Williamsville
Willow Springs
Poplar Bluff
Van Buren
Paragould
Jonesboro
Blytheville
Memphis
Helena
Pine Bluff
Little Rock
Hot Springs
Texarkana
Shreveport
Monroe
Vicksburg
Jackson
Meridian
Laurel
Hattiesburg
New Orleans
Mobile
Pensacola
Tallahassee
Jacksonville
Savannah
Charleston
Columbia
Greenville
Spartanburg
Asheville
Knoxville
Chattanooga
Nashville
Louisville
Cincinnati
Columbus
Zanesville
Wheeling
Pittsburgh
Harrisburg
Philadelphia
Baltimore
Washington
Richmond
Norfolk
Roanoke
Bristol
Lynchburg
Charlottesville
Fredericksburg
Alexandria
Arlington
Manassas
Front Royal
Winchester
Martinsburg
Hagerstown
Frederick
Gettysburg
Lancaster
Reading
Allentown
Bethlehem
Easton
Trenton
Princeton
New Brunswick
Newark
Jersey City
New York
Albany
Troy
Schenectady
Utica
Syracuse
Rochester
Buffalo
Niagara Falls
Toronto
Hamilton
London
Windsor
Detroit
Port Huron
Flint
Saginaw
Bay City
Grand Rapids
Kalamazoo
Battle Creek
Jackson
Ann Arbor
Toledo
Cleveland
Akron
Canton
Youngstown
Erie
Scranton
Wilkes-Barre
Binghamton
Elmira
Corning
Hornell
Olean
Salamanca
Jamestown
Meadville
Oil City
Franklin
Clarion
Punxsutawney
Johnstown
Altoona
Bedford
Cumberland
Hancock
Williamsport
Lock Haven
Sunbury
Shamokin
Pottsville
Hazleton
Stroudsburg
Port Jervis
Middletown
Newburgh
Poughkeepsie
Hudson
Kingston
Catskill
Albany
Troy
Schenectady
Amsterdam
Gloversville
Johnstown
Little Falls
Herkimer
Utica
Rome
Oneida
Syracuse
Auburn
Seneca Falls
Geneva
Canandaigua
Rochester
Batavia
Buffalo
Niagara Falls
Lockport
Medina
Albion
Brockport
Fairport
Pittsford
Victor
Canandaigua
Geneva
Penn Yan
Watkins Glen
Elmira
Corning
Hornell
Olean
Salamanca
Jamestown
Meadville
Oil City
Franklin
Clarion
Punxsutawney
Johnstown
Altoona
Bedford
Cumberland
Hancock
Williamsport
Lock Haven
Sunbury
Shamokin
Pottsville
Hazleton
Stroudsburg
Port Jervis
Middletown
Newburgh
Poughkeepsie
Hudson
Kingston
Catskill
Albany
Troy
Schenectady
Amsterdam
Gloversville
Johnstown
Little Falls
Herkimer
Utica
Rome
Oneida
Syracuse
Auburn
Seneca Falls
Geneva
Canandaigua
Rochester
Batavia
Buffalo
Niagara Falls
Lockport
Medina
Albion
Brockport
Fairport
Pittsford
Victor
Canandaigua
Geneva
Penn Yan
Watkins Glen


OKLAHOMA
ARKANSAS
LOUISIANA
OKLAHOMA CITY
TULSA
MUSKOGEE
WICHITA FALLS
LITTLE ROCK
DENISON
GREENVILLE
FT. WORTH
DALLAS
SHREVEPORT
TEXARKANA
ARDMORE
McALESTER
Boise
Dalhart
Spearman
Pampa
Amarillo
Panhandle
Canyon
Clarendon
Childress
Farwell
Plainview
Floydada
Lubbock
MacBain
Paducah
Quanah
Roten-269-A
Stamford-226-A
Hamlin
Sweetwater
Abilene
Albany
Cisco-155-A
DE LEON 119-A
Gorman
Lueders
Beaver
Supply
Woodward
Sharon
Vici
Camargo
Leedey
Hammon-153-B
Elk City
Carter
Brinkman
Mangum
ALTUS-76-B
Frederick-51-B
Hollister
Grandfield
Devol
Burkburnett
Iowa Park
Electra-G-86
Ringgold-G-71
Henrietta-G-86
Gainesville-G-15
Whitesboro-686
Sherman
Denison
Bells
Whitewright
Trenton
Leonard
Celeste-D-40
D-52
Collinsville
Pilot Point
722
Denton
Roanoke
757
Burleson
Alvarado
Grandview
Itasca
Cleburne
Rockwall
Garland
Lancaster
Waxahachie-D-137
Italy
Corsicana
Addison
Mineola
Tyler
Longview
Carthage
Marshall
Texarkana
Hope
Malvern
Benton
Haskell
Hot Springs
Camden
Eldorado
Lewisville
Ashdown
Pittsburg
Mt. Pleasant
Paris
Durant-64
Hugo
Idabel
Atoka-610
Antlers
Stringtown
Burg
Kiowa
Savanna
Krebs
Bishop R-11
Wilburton
Wister
Tupelo
Ada
Canadian
Eufaula-538
Checotah
Spiro
Wagoner-488
Chase-499
Porter
Sand Springs
Skiatook
Z-278
Broken Arrow
Coweta
Welch
Bluejacket
Chetopa
Oswego
Cherryvale
Coffeyville
Independence
Caney
Dewey
Bartlesville
A-198
Nelagony
Wynona
Hominy
A-245-OSAGE
Cleveland
Guthrie
Yale
Cushing
Ralls
Crosbyton
Spur
Jayton
Girard
Kalvesta
Ft. Hancock
Sierra Blanca
Van Horn
Sanderson
Del Rio
Eagle Pass
Laredo
Corpus Christi
Alice
Kingsville
Harlingen
Brownsville
Rio Grande City
Mission
Edinburg
McAllen
Pharr
Alamo
Weslaco
Raymondville
Port Isabel
Brownsville
Matamoros
Monterrey
Mexico
Galena
Seligman
Fayetteville
Van Buren
Ft. Smith
Dardanelle
Russellville
Searcy
Batesville
Newport
Jonesboro
Hoxie
Paragould
Hardy
Willow Springs
Van Buren
Poplar Bluff
Malden
Osceola
Blytheville
Wynne
Forrest City
Brinkley
Stuttgart
Dewitt
Arkansas City
Greenwood
Tinsman
Fordyce
Rolling Fork
Vicksburg
Jackson
Port Gibson
Natchez
Crossett
Warren
Monroe
Ruston
Jennings
Lake Charles
Beaumont
Port Arthur
Houston
Galveston
Bay City
Victoria
Corpus Christi
Alice
Kingsville
Harlingen
Brownsville
Rio Grande City
Mission
Edinburg
McAllen
Pharr
Alamo
Weslaco
Raymondville
Port Isabel
Brownsville
Matamoros
Monterrey
Mexico
Galena
Seligman
Fayetteville
Van Buren
Ft. Smith
Dardanelle
Russellville
Searcy
Batesville
Newport
Jonesboro
Hoxie
Paragould
Hardy
Willow Springs
Van Buren
Poplar Bluff
Malden
Osceola
Blytheville
Wynne
Forrest City
Brinkley
Stuttgart
Dewitt
Arkansas City
Greenwood
Tinsman
Fordyce
Rolling Fork
Vicksburg
Jackson
Port Gibson
Natchez
Crossett
Warren
Monroe
Ruston
Jennings
Lake Charles
Beaumont
Port Arthur
Houston
Galveston
Bay City
Victoria
RED RIVER
SOUTH CANADIAN RIVER
ARKANSAS RIVER
MISSISSIPPI RIVER
A.T.&S.F.
C.R.I.&P.
T.&P.
K.C.S.
M.P.
St.L.-S.F.
St.L.-S.W.
Ft.W.&D.
I.C.


T E
E
A
S
LOUISIANA
MEXICO
GULF OF
Big Lake
San Angelo
Brownwood
Brady
Eldorado
Sonora
Fort Stockton
Sanderson
Dublin
Hico
Morgan
Whitney
Meridian
Clifton
Hillsboro
West
WACO-846
Temple-880
Smith
Hofleng
Bartlett
Granger-908
Taylor
Elgin
Bastrop
Smithville
West Point
La Grange
Fayetteville
New Ulm
Cat Spring
Sealy-1035
Brookshire
Waller
HOUSTON-1084
Tenaha
Jacksonville
Tyler
Tesuque
Palestine
Jewett
Trinity
Nacogdoches
Many
Cypress
Alexandria
Leesville
De Ridder
De Quincy
Opelousas
Lake Charles
Pt. Arthur
Port Arthur
Winnfield
Ferriday
Llano
U.S.-Georgetown
Pflugerville
U-47-AUSTIN
Kerrville
M-53-San Marcos
New Braunfels
Comal
M-104 SAN ANTONIO
Fratt
Del Rio
Spofford
Uvalde
S. Carlos
Piedras Negras
Eagle Pass
Allende
RIO GRANDE
Muzquiz
Barroteran
Nuevo Laredo
Laredo
Gardendale
Tilden
Pleasanton
Kenedy
Victoria
Cuero
Yoakum
Eagle Lake
Wharton
Arcola
Algoa
Richmond
Bay City
Matagorda
Bloomington
Beeville
Skidmore
Mathis
Sinton
Alice
San Diego
Robstown
Corpus Christi
Aransas Pass
Port Aransas
Seadrift
Port Lavaca
Victoria
Reedville
Lockhart
Galveston
City Jct.
Angleton
GALVESTON
Baton Rouge
New Orleans
Morgan City
MISSISSIPPI
Brookhaven
MISSOURI-KANSAS-TEXAS LINES
Owned and Operated
Operated under trackage rights
December, 1958

[fol. 91] EXHIBIT 2 TO AFFIDAVIT

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS
Office of Superintendent — Southern Division

General Order No. 119

Waco, Texas, October 2nd, 1958

235

Train and Enginemen,
Western Subdivision:

Effective 12:01 AM, October 19, 1958, all way freight service and assignments between North Yard and Forgan on the Western Subdivision are abolished, and in lieu thereof way freight service and assignments will be established as follows;

Two crews between North Yard and Elk City daily except Sunday, one crew with Sunday layover and home terminal at North Yard, and the other with Sunday layover at Elk City and home terminal at North Yard.

One crew between Elk City and Forgan on alternate day basis, leaving Elk City on Mondays, Wednesdays and Fridays, and returning from Forgan on Tuesdays, Thursdays and Saturdays, with Sunday layover and home terminal at Elk City.

R. B. George,
Superintendent.

cc General Order Books.
RBG CWR ROJ DM WLN Dispatchers-Waco.
EPK JKL JEC JLC LHO PAJ WPA DFB
CTW LMS AFW TSC CAB VKM ROJ
Mr. C. S. Minor, Ft. Worth.
Mr. H. E. Moyer, Wichita Falls.
Mr. P. F. Thomas, Teague (3)

.....

..... 1958

Mr. R. B. George—Waco.

This will acknowledge receipt of your General Order No. 119, dated October 2, 1958, file 235, which has been posted in General Order Book at this place.

Signed ..... Occupation ..... Location .....

[fol. 92]

EXHIBIT 3 TO AFFIDAVIT

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS
Office of Superintendent — Southern Division

General Order No. 120

Waco, Texas, October 2nd, 1958

235

Posted: Time ..... Date .....

Posted by .....

Train and Enginemen,
Western Subdivision:

Effective 12:01 AM, October 19, 1958, Altus and Woodward are abolished as terminals in pool freight and unassigned freight service on the Western Subdivision, and in lieu thereof Elk City and Forgan will be the terminals for crews in pool freight and unassigned freight service until further advised.

R. B. George,
Superintendent.

cc General Order Books.
RBG CWR ROJ DM WLN Dispatchers-Waco.
EPK JKL JEC JLC LHO PAJ WPA DFB
CTW LMS AFW TSC CAB VKM ROJ
Mr. C. S. Minor, Ft. Worth.
Mr. H. E. Moyer, Wichita Falls.
Mr. P. F. Thomas, Teague (3)

.....

..... 1958

Mr. R. B. George—Waco.

This will acknowledge receipt of your General Order No. 120, dated October 2, 1958, file 235, which has been posted in General Order Book at this place.

Signed ..... Occupation ..... Location .....

[fol. 93]

EXHIBIT 4 TO AFFIDAVIT

(Letterhead of Brotherhood of Railroad Trainmen, General Grievance Committee, Missouri-Kansas-Texas Railroad System.)

Denison, Texas

March 1, 1954

Mr. A. F. Winkel
Assistant General Manager
Missouri-Kansas-Texas RR.,
Dallas 2, Texas

Dear Sir:

At the conclusion of the meeting of Special Board of Adjustment, it was my understanding that we would be given a date within 3 weeks from that time to assemble the various agreed understandings and memorandums of agreements for the purpose of revising and bringing our road and yard agreements up to date.

Since our full General Committee will be convened the week of March 8th and it is necessary that I be out of town the week of March 15th, it will be appreciated if you can give me a definite date the week of March 22nd so that I will be in a position to tell the General Committee when it is convened just when I expect to meet with you for the purpose outlined above as both our committeemen and myself are continually being asked when are we going to get our agreements revised and brought up to date.

Your immediate attention to this request will be appreciated.

Yours truly,

/s/ C. L. FLANERY
C. L. Flanery

CLF/sw

[fol. 94]

EXHIBIT 5 TO AFFIDAVIT

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

A. F. WINKEL,
ASSISTANT GENERAL MANAGER
E. J. HAMMANN,
DIRECTOR OF PERSONNEL

Dallas 2, Texas—March 4, 1954

2500

Mr. W. D. Johnson,
General Chairman,
Order of Railway Conductors,
Denison, Texas.

Mr. C. L. Flanery,
General Chairman,
Brotherhood of Railroad Trainmen,
Denison, Texas.

Gentlemen:

Referring to Mr. Johnson's letter January 1 and Mr. Flanery's letter March 1, regarding conference for purpose of bringing Trainmen's and Yardmasters' Agreements up-to-date.

We shall be glad to go over this matter with you in my office beginning 10:00 AM Thursday, March 25, 1954.

Please advise if this date is agreeable to you.

Yours very truly,

A. F. Winkel

[fol. 95]

EXHIBIT 6 TO AFFIDAVIT

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

A. F. WINKEL,
ASSISTANT GENERAL MANAGER
E. J. HAMMANN,
DIRECTOR OF PERSONNEL

Dallas 2, Texas, September 17, 1954

2500

Mr. W. D. Johnson,
General Chairman,
Order of Railway Conductors,
P. O. Box 93,
Denison, Texas.

Mr. C. L. Flanery,
General Chairman,
Brotherhood of Railroad Trainmen,
P. O. Box 76,
Denison, Texas.

Gentlemen:

Enclosed please find one copy to each of you of proof of proposed reprint of the Trainmen's Agreement with revisions to April 1, 1954, for your check and advice as to corrections, if any, other than those shown in pencil, that should be made before printing.

You will note there are 13 sheets of proof of the original agreement as compared to 17 sheets of the Supplemental Agreements and understandings, which if printed as now set up will result in a much larger book than the present agreement.

Yours very truly,

A. F. WINKEL

[fol. 96]

EXHIBIT 7 TO AFFIDAVIT

(Letterhead of Brotherhood of Railroad Trainmen, General Grievance Committee, Missouri-Kansas-Texas Railroad System.)

In Reply
Refer to File No.
1-737

Denison, Texas

November 15, 1954

Mr. A. F. Winkel
Assistant General Manager
Missouri-Kansas-Texas Railroad
MKT Building
Dallas 2, Texas

Dear Sir:

Reference is made to your 2500, September 17, 1954 addressed to Mr. W. D. Johnson, General Chairman, Order of Railway Conductors and the undersigned with enclosed copy of proof of proposed reprint of the Trainmen's Agreement with revisions to April 1, 1954.

Please be advised we have checked this copy for correctness and find none other than those shown in pencil that should be made before printing.

We are agreeable to the agreements being printed at the earliest possible time.

Yours truly,

/s/ C. L. FLANERY
C. L. Flanery

CLF:sw

[fol. 97]

EXHIBIT 8 TO AFFIDAVIT

(Letterhead of General Committee of Adjustment, Order of Railway Conductors, Missouri-Kansas-Texas Lines.)

November 16, 1954

GN — 20
GN — 134

Mr. A. F. Winkel
Assistant General Manager
Missouri-Kansas-Texas Lines
M-K-T Building
Dallas 2, Texas

Dear Sir:

This has reference to your letter of September 17, 1954, with attached proof of proposed reprint of the Trainmen and Conductors Agreement, which you sent to Mr. C. L. Flanery and the undersigned for approval.

Under revision of Article 44, letter is printed showing this revision was handled with General Chairman E. R. Bryan for revisions. No mention is made that the Conductors organization was a party to this revision. You will recall that this matter was discussed in conference between you and I concerning the fact that this article had been revised without consulting the Conductors on the matter. You then agreed, in order to make this revision legal, that another revised agreement would be prepared and signed by you and myself, which was done. The letters reprinted in this proof indicates this matter was only handled by the BofRT and the management, which in itself is illegal and some indication should be made that it was also revised by the Conductors on the same date.

Yours very truly,

/s/ W. D. JOHNSON
General Chairman, ORC&B
M-K-T Lines

[fol. 98]

EXHIBIT 9 TO AFFIDAVIT

(Letterhead of General Committee of Adjustment, Order of Railway Conductors, Missouri-Kansas-Texas Lines.)

December 29, 1954

GN — 134

Mr. A. F. Winkel
Assistant General Manager
Missouri-Kansas-Texas Lines
M-K-T Building
Dallas 2, Texas

Dear Sir:

This will acknowledge your letter of December 24, 1954, file 2500, having further reference to conference and correspondence concerning reprinting and bringing Trainmen's Agreement up-to-date.

Your letters concerning the handling of the work train service on the New Waco District have become so confusing and so far from the facts concerning this question that a considerable amount of clarification is needed. The second paragraph of your letter of December 24, 1954 is exactly in line with the facts as discussed in conference and a letter of understanding was so issued by you on March 29, 1954, and signed first by you, then by me, and then by Mr. Flanery. The main purpose of this understanding was to make the new schedule read and apply to brakemen in the same manner that the present agreement now provides and has provided since November 1, 1929 to conductors. After signing this understanding Mr. Flanery discovered that he was without authority to make this interpretation and voided his signature on my copy of the understanding. I am offering no protest to Mr. Flanery's action as I would have done the same thing under the circumstances.

After agreeing to all of these things in conference and issuing a letter of understanding to that effect, which substantiates the position I took in conference, the rule that is

in the schedule, and my position at the present time, and which has never been changed at any time, you suddenly take the position that the schedule is wrong, or that I am attempting to change the schedule. Since Mr. Flanery's letter of April 8, 1954 you have continuously argued with the very position taken in conference and in the letter of understanding and in the schedule.

In the last paragraph of your letter you make the statement that my position is unjustified. Does it not appear somewhat ridiculous to make the statement that my position is unjustified when both organizations and yourself agreed to this position in conference and in letter of understanding since the conference, and that we were all of the opinion that the schedule could not be changed, and my position was then and is now exactly that.

[fol. 99] Please read the first paragraph of Mr. Flanery's letter to you of April 8, 1954 which states:

> "Reference is made to your file 2500, March 29, 1954 and our conference March 26, 1954 when it was agreed that trainmen on the 7th District would be entitled to man all assigned work train service south of Hillsboro and the 6th District all assigned work trains service north of Hillsboro."

This is a further statement of our agreement in conference and since the writing of that letter which reflects the position taken by all of us in conference, you reverse *your* position and state that *my* position is unjustified.

You state further in the last paragraph of your letter that you are withdrawing from the tentative understanding of March 29, 1954, which has already been revoked insofar as Mr. Flanery is concerned, and as stated above in this letter, the only purpose of that understanding was to bring the handling of brakemen in line with the handling of conductors as specified in the present contract. The signing of that letter of understanding did not in any way change the provision of the schedule insofar as the handling of the conductors is concerned, and that fact is verified by your request of me, since Mr. Flanery could not endorse that interpretation for the brakemen, that I handle this

matter with my Committee in an effort to put the work train service under the interdivisional mileage provision. I did handle this matter with my Committee and they refused to change the schedule to that extent, and I so advised you on July 22, 1954 making reference to your request on this matter.

Starting on the bottom of page 8 under "General" in the back of the present agreement book provisions are made for handling *conductors* in freight service on the New Waco District. These provisions are continued on page 9 down through the third paragraph on that page. All of which has been amended, revised, or cancelled in previous years except the following:

> "With the further understanding that the 7th District will be entitled to man all work train service south of Hillsboro and the 6th District all work train service north of Hillsboro; * * *.
>
> Each district will fill extra vacancies on assigned crews from their respective districts."

Each one of these paragraphs and provisions were discussed at length in conference held in Dallas, March 25 [fol. 100] and 26, 1954, and it was agreed by all concerned that this provision applied only to conductors as stated in the schedule, and the letter of understanding of March 29, 1954 was agreed upon to make the handling for brakemen and conductors the same.

Inasmuch as Mr. Flanery could not agree to that understanding it left the matter exactly as it was before and the paragraphs quoted above pertaining to the handling of conductors in work train service is still in effect for conductors and has been my position since the outset of this conference and correspondence. I have no authority to change it. I have even been refused authority to change it, and if my position is unjustified so has been the position of all previous general chairmen of the conductors and all previous managers of personnel of the railroad company, including yourself when this position was agreed to in conference.

I urgently request that you proceed with the reprinting of the agreement with this article unchanged and reading and meaning as quoted above.

Yours very truly,

/s/ W. D. JOHNSON
General Chairman, ORC&B
M-K-T Lines

CC: Mr. C. L. Flanery

[fol. 102]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

No. 8061—Civil

[Title omitted]

ORDER CONTINUING CAUSE—December 18, 1958

On December 18, 1958, the above cause came on to be heard. Came plaintiffs, and came defendants. The Court heard the Motion to Dismiss the Complaint and to Dissolve the Temporary Restraining Order herein, and the argument and statements of counsel upon the pleading as a whole. The Court is of the opinion that this matter should be held in abeyance pending efforts of the parties to agree upon arbitration looking toward final settlement of the dispute and controversy between plaintiffs and defendants and, in the event the parties are not able to agree upon such arbitration, then until decisions on the various submissions of the controversy made by the plaintiffs, as set out in the complaint, as amended, shall have been rendered by the agencies to which such submissions have been made, and is further of the opinion that, pending settlement of the controversy as a result of the arbitration looking to settlement, or determination of the controversy by decisions in the submissions, as aforesaid, plaintiffs should restore the

conditions affected by plaintiffs' General Orders 119 and 120, referred to in the complaint, as amended, to the conditions which existed prior to the effective date of such orders, and maintain such conditions during such period, or make the payments hereinafter specified, and that defendants and the employees of plaintiffs represented by defendants should not strike on account of the dispute and controversy between plaintiffs and defendants herein

It Is, Therefore, Ordered that this cause be continued and held in abeyance until the controversy between plaintiffs and defendants herein shall have been settled by and between the parties, or until decisions on the various submissions made by plaintiffs, as set out in the complaint, [fol. 103] as amended, have been rendered, and that during such period plaintiffs restore the conditions which were affected by their General Orders 119 and 120, referred to in the complaint, as amended, to the conditions which existed before such orders became effective, and maintain such restored conditions during such period. In the alternative if the plaintiffs do not elect to restore and maintain the conditions as ordered aforesaid, then until the matters have been finally determined in the boards hereinabove mentioned, the plaintiffs will pay to the employees of the plaintiffs affected adversely by plaintiffs' General Orders 119 and 120 the same amounts of money that they would have paid had the changes made by plaintiffs' General Orders 119 and 120 not been made.

In any controversy as to what this pay may be, it may be determined by the average annual wage earned by such employee or employees in the affected service during 1957 adjusted for wage increases put into effect subsequent to January 1, 1958. Any amount payable under this order shall be reduced by the amount which is payable by plaintiffs to the Railroad Retirement Board for unemployment compensation received by such employee. It is further ordered that the defendants and employees of plaintiffs represented by defendants be and they are hereby enjoined from striking during such period on account of the controversy and dispute involved herein between plaintiffs and defendants.

It is further ordered that the present bond on file herein shall be continued in effect as the injunction bond.

Dated at Dallas, Texas, this 18th day of December, 1958.

T. Whitfield Davidson, United States District Judge.

Approved as to Form:

O. O. Touchstone, Attorney for Plaintiffs

William P. Fonville, Attorney for Defendants.

[fol. 104]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

Civil Action No. 8061

[Title omitted]

NOTICE OF APPEAL OF MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, ET AL.—Filed December 29, 1958

Notice is hereby given that Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, plaintiffs in the above entitled Civil Action No. 8061, hereby appeal to the United States Court of Appeals for the Fifth Circuit from that portion of the order entered in said action on December 18, 1958, by the District Court of the United States for the Northern District of Texas, Dallas Division, which reads as follows:

> "The Court is of the opinion * * * that, pending settlement of the controversy as a result of the arbitrations looking to settlement, or determination of the controversy by decisions in the submissions, as aforesaid, plaintiffs should restore the conditions affected by plaintiffs' General Orders 119 and 120, referred to in the complaint, as amended, to the conditions which existed prior to the effective date of such orders, and maintain such conditions during such period, or make the payments hereinafter specified * * *."

"IT IS, THEREFORE, ORDERED that * * * until the controversy between plaintiffs and defendants herein shall have been settled by and between the parties, or until decisions on the various submissions made by plaintiffs, as set out in the complaint, as amended, have been rendered, and that during such period plaintiffs restore the conditions which were affected by their General Orders 119 and 120, referred to in the complaint, as amended, to the conditions which existed before such orders became effective, and maintain such restored conditions during such period. In the alternative if the plaintiffs do not elect to restore and maintain the conditions as ordered aforesaid, then until the matters have been finally determined in the boards hereinabove mentioned, the plaintiffs will pay to the employees of the plaintiffs affected adversely by plaintiffs' General Orders 119 and 120 the same amounts of money that they would have paid had the changes made by plaintiffs' General Orders 119 and 120 not been made.

[fol. 105] "In any controversy as to what this pay may be, it may be determined by the average annual wage earned by such employee or employees in the affected service during 1957 adjusted for wage increases put into effect subsequent to January 1, 1958. Any amount payable under this order shall be reduced by the amount which is payable by plaintiffs to the Railroad Retirement Board for unemployment compensation received by such employees."

Dated December 29, 1958.

W. A. Thie, M. E. Clinton, M. W. Reeves, Barrett Building, Denison, Texas;

O. O. Touchstone, 405 Southland Life Building, Dallas 1, Texas,

Attorneys for Appellants, Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas.

[fol. 106] Cost Bond—Filed December 29, 1958 (omitted in printing).

[fol. 112]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

Civil Action No. 8061

[Title omitted]

MOTION FOR STAY ORDER—Filed December 29, 1958

Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, plaintiffs in the above entitled and numbered cause, have appealed to the United States Court of Appeals for the Fifth Circuit from that portion of the order entered in said cause on December 18, 1958, reading as follows:

> "The Court is of the opinion * * * that, pending settlement of the controversy as a result of the arbitration looking to settlement, or determination of the controversy by decisions in the submissions, as aforesaid, plaintiffs should restore the conditions affected by plaintiffs' General Orders 119 and 120, referred to in the complaint, as amended, to the conditions which existed prior to the effective date of such orders, and maintain such conditions during such period, or make the payments hereinafter specified * * * ."
>
> "IT IS, THEREFORE, ORDERED that * * * until the controversy between plaintiffs and defendants herein shall have been settled by and between the parties, or until decisions on the various submissions made by plaintiffs, as set out in the complaint, as amended, have been rendered, and that during such period plaintiffs restore the conditions which were affected by their General Orders 119 and 120, referred to in the complaint, as amended, to the conditions which existed

before such orders became effective, and maintain such restored conditions during such period. In the alternative if the plaintiffs do not elect to restore and maintain the conditions as ordered aforesaid, then until the matters have been finally determined in the boards hereinabove mentioned, the plaintiffs will pay to the employees of the plaintiffs affected adversely by plaintiffs' General Orders 119 and 120 the same amounts of money that they would have paid had the changes made by plaintiffs' General Orders 119 and 120 not been made.

[fol. 113] "In any controversy as to what this pay may be, it may be determined by the average annual wage earned by such employee or employees in the affected service during 1957 adjusted for wage increases put into effect subsequent to January 1, 1958. Any amount payable under this order shall be reduced by the amount which is payable by plaintiffs to the Railroad Retirement Board for unemployment compensation received by such employees."

Plaintiffs move the Court for an order staying the enforcement of said part of said order pending the disposition of the said appeal, and they request the Court to fix the amount of the bond required of plaintiffs.

This stay order is requested and plaintiffs respectfully submit that it should be granted for each and all of the following reasons:

(a) The part of said order of December 18, 1958, from which plaintiffs have appealed is a preliminary mandatory injunction against plaintiffs issued by the District Court without requiring security from defendants in violation of Rule 62 (c) of the Federal Rules of Civil Procedure reading in part as follows:

"No * * * preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained."

If plaintiffs are required to comply with said part of said order during the pendency of their appeal, they will suffer great damage during such period through the payment of large sums of money to their said employees and, if plaintiffs successfully prosecute their appeal, they will be unable, through lack of such security, to recover such damages and costs.

(b) Said preliminary mandatory injunction was issued by the District Court against plaintiffs without pleadings or evidence to support its issuance.

(c) Said part of said order is not necessary to protect the employees adversely affected by the actions of plaintiffs. Said employees, under contracts with plaintiffs and under the Railway Labor Act, can file with plaintiffs and progress to the National Railroad Adjustment Board time claims for any contract violations of plaintiffs. Said Board, which has exclusive primary jurisdiction, can and will determine upon such submission whether plaintiffs have violated any agreements with defendants and what sums of money, if any, are owing by plaintiffs to claimants as a result thereof.

[fol. 114] (d) Enforcement of said part of said order would defeat the exclusive primary jurisdiction of the National Railroad Adjustment Board to which plaintiffs have submitted this entire controversy.

(e) Enforcement of said part of said order would defeat any jurisdiction of the National Mediation Board and any jurisdiction of the Committees to whom plaintiffs have submitted parts of this controversy.

(f) Enforcement of said part of said order pending plaintiffs' appeal would defeat the jurisdiction of this Court to determine whether any sums of money should be paid to any of plaintiffs' employees pending decisions by said Boards and Committees.

(g) Enforcement of said part of said order would destroy the status quo at the time of the commencement of this action, which a preliminary injunction is designed to preserve.

(h) Enforcement of said part of said order would restore and preserve the status quo which existed before the strike which made this action necessary and said part of said order therefore constitutes an adjudication of the merits of this controversy on plaintiffs' application for a preliminary injunction.

Wherefore, plaintiffs pray for an order staying enforcement of said part of said order.

Dated December 29, 1958.

W. A. Thie, M. E. Clinton, M. W. Reeves, Barrett Bldg., Denison, Texas;

O. O. Touchstone, 405 Southland Life Building, Dallas 1, Texas,

Attorneys for Plaintiffs.

[fol. 115]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

Civil Action No. 8061

[Title omitted]

AMENDMENT AND SUPPLEMENT TO MOTION FOR STAY ORDER —Filed January 12, 1959

Come now Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, plaintiffs in the above entitled and numbered cause, and amend and supplement their motion for a stay order, filed herein on December 29, 1958, as follows, to wit:

Amend paragraph (h) of said motion to read as follows:

(h) Enforcement of said part of said order would restore and preserve the status quo which existed before said changes were made by plaintiffs and before the strike which made this action necessary and said

part of said order therefore constitutes an adjudication of the merits of this controversy on plaintiffs' application for a preliminary injunction.

Amend and supplement said motion by adding the following paragraphs:

(i) Plaintiffs are informed and believe and therefore aver that the employees of plaintiffs to whom plaintiffs would be required to make payments under said part of said order during the pendency of plaintiffs' appeal would be unable to respond in damages to plaintiffs and plaintiffs would be unable to recover the amount of such payments from said employees, or any of them.

(j) Enforcement of said part of said order would render plaintiffs' appeal moot as to all payments made during plaintiffs' appeal and, as to such payments, would deprive plaintiffs of the fruits of their appeal.

(k) The injuries, loss and damage to plaintiffs, and each of them, by reason of said payments to plaintiffs' said employees will be immediate and irreparable and for which plaintiffs, and neither of them, have any adequate remedy at law.

[fol. 116] (l) Plaintiffs are informed and believe and therefore aver that, unless said stay order is issued, defendants will take immediate steps to have execution issued or otherwise compel immediate compliance by plaintiffs with said part of said order.

Dated January 2, 1959.

W. A. Thie, M. E. Clinton, M. W. Reeves, Barrett Bldg., Denison, Texas;

O. O. Touchstone, 405 Southland Life Bldg., Dallas 1, Texas,

Attorneys for Plaintiffs.

Duly sworn to by A. F. Winkel, jurat omitted in printing.

[fol. 134]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

Civil Action No. 8061

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY et al., Plaintiffs,

vs.

THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS et al., Defendants.

MOTION FOR THE ENTRY OF THE HEREWITH TENDERED ORDER —Filed January 12, 1958

To the Honorable Judge of Said Court:

Come now the plaintiffs and respectfully object and except to the order tendered by the defendants, which is submitted to the court for signature, which proposed order contains matters, statements, and purported findings which were not before the court upon the plaintiffs' motion for a stay of the preliminary mandatory injunction pending appeal to the Court of Appeals for the Fifth Circuit, which court now has jurisdiction over the subject matter of such preliminary mandatory injunction; that the plaintiffs likewise respectfully submit that the proposed order attempts to alter, change, or introduce new issues into the controversy and such preliminary mandatory injunction when the court has no jurisdiction to do so because of the appeal of the plaintiffs; that in the event the court signs such proposed order, the plaintiffs duly object and except thereto.

That there is tendered herewith an order proposed by the plaintiffs, which correctly and properly reflects the disposition of its motion for a stay and they move the court that the tendered order be signed by the court.

Wherefore, the plaintiffs respectfully move the court to sign the herewith tendered order prepared by the plaintiffs, which correctly and properly reflects the action and

disposition of the court upon the hearing had upon the motion for a stay pending the plaintiffs' appeal from the action of the court in granting the preliminary mandatory injunction against the plaintiffs.

W. A. Thie, M. E. Clinton, M. W. Reeves, O. O. Touchstone, Attorneys for the Plaintiffs.

Motion of Plf. denied to wh. Plf. excps.
1-13-59

T. Whitfield Davidson

[fol. 135]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

Civil Action No. 8061

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS et al., Plaintiffs,

vs.

THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS et al., Defendants.

PROPOSED ORDER DENYING PLAINTIFFS' MOTION FOR AN ORDER STAYING THE ENFORCEMENT OF THE PRELIMINARY MANDATORY INJUNCTION ETC.—Filed January 12, 1959

On the 5th day of January, 1959, came regularly on to be heard the plaintiffs' motion for an order staying the enforcement of the mandatory injunction, which is the subject matter of plaintiffs' appeal to the United States Court of Appeals for the Fifth Circuit, and came all parties by and through their attorneys of record; and the court having been fully advised in the premises by the argument of the respective counsel for all parties, and having considered the entire record in this cause without hearing additional evidence of any character,

It Is the Order of the court that the plaintiffs' motion for an order staying the enforcement of the preliminary mandatory injunction entered herein on December 18, 1958, requiring the plaintiffs to restore the conditions effected by plaintiffs' General Orders 119 and 120, or, alternatively, to pay the average annual wages earned by any employees adversely affected by such orders, be and it is hereby in all things denied.

To all of which the plaintiffs in open court duly and regularly objected and excepted.

Signed on this, the 12 day of January, 1959.

.....
Chief Judge

[fol. 136]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

No. 8061—Civil

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, et al., Plaintiffs,

vs.

THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS, et al., Defendants.

ORDER DENYING MOTION FOR STAY ORDER AS AMENDED—Filed January 13, 1959

On January 5, 1959, came on to be heard the motion of plaintiffs for an order staying the enforcement of that part of the order of this Court entered herein on December 18, 1958, providing that the plaintiffs restore the conditions which were affected by their General Orders 119 and 120, referred to in the complaint as amended, to the conditions which existed before such orders became effective, and maintain such conditions during the period this cause

is continued and held in abeyance in accordance with said order of December 18, 1958, or, in the alternative, if plaintiffs do not elect to restore and maintain such conditions, then plaintiffs pay to the employees of plaintiffs affected adversely by said General Orders the same amounts of money that they would have paid had the changes made by such orders not been made. Came the plaintiffs, by and through their attorneys. Came the defendants, by and through their attorneys. The Court heard the motion and the statements and argument of counsel.

On December 18, 1958, came on to be heard plaintiffs' application for a preliminary injunction in this cause. The Court granted plaintiffs leave to amend the complaint. Defendants moved to dismiss the complaint. The Court heard the motion to dismiss and the statements and argument of counsel upon the motion to dismiss and upon the pleading as a whole. The Court was of the opinion that, in an effort to get the parties together and to afford plain- [fol. 137] tiffs and defendants an opportunity to settle the controversy between them or to agree upon arbitration looking to settlement thereof, and in the event the parties should fail to agree upon settlement or arbitration looking to settlement, to give the various bodies to which plaintiffs have referred the controversy an opportunity to reach a decision upon the matters submitted, the Court should hold this cause in abeyance pending such settlement, arbitration, or decisions upon such submissions, and during such period enjoin such strike on the part of the defendants and the employees of the plaintiffs represented by the defendants on account of the controversy herein on condition, and only on condition, that plaintiffs restore and maintain the conditions which existed prior to the issuance of plaintiffs' General Orders 119 and 120 effecting changes which gave rise to the controversy between plaintiffs and defendants on account of which the strike involved herein was called, or, in the alternative, pay to the employees of plaintiffs adversely affected by such General Orders the same amounts of money they would have paid had the changes made by such General Orders not been made. Accordingly, the Court entered herein its order of December 18, 1958. It was the intendment of the order, and the Court so de-

clares, that defendants and the employees of plaintiffs represented by defendants should be enjoined from striking on account of the controversy involved herein on condition, and only on condition, that the plaintiffs restore the conditions affected by General Orders 119 and 120 to the conditions which existed prior to the effective date of such orders, and maintain such conditions during the period this cause was continued and held in abeyance or, in the alternative, pay the employees of plaintiffs adversely affected by such orders the same amounts of money they would have paid had the changes made by such General Orders not been made. The injunction against the strike was granted only on condition that plaintiffs restore and maintain such conditions or, in the alternative, make said payments. Plaintiffs have now filed notice of appeal from that part of the order of December 18, 1958, imposing the conditions upon which the injunction against the strike, the benefits of which injunction plaintiffs seek to retain, was issued. Plaintiffs now move for an order staying enforcement of that part of the order of December 18, 1958, requiring restoration and maintenance of the conditions [fol. 138] which existed prior to the initiation of the controversy between plaintiffs and defendants on account of which the strike involved herein was called or, in the alternative, payments. Plaintiffs seek to have the injunction issued herein in their favor maintained and at the same time to avoid the conditions upon which such injunction was issued by this Court. The Court is of the opinion that to stay the enforcement of the conditions upon which this Court granted the injunction in favor of plaintiffs would constitute a frustration of the order of the Court granting the injunction herein, would be inequitable, and would constitute a miscarriage of justice.

It is, therefore, Ordered that the motion of plaintiffs for an order staying the enforcement of that part of the order entered herein on December 18, 1958, requiring plaintiffs, as a condition of the injunction herein, to restore the conditions which were affected by plaintiffs' General Orders 119 and 120 to the conditions which existed prior to the effective date of such orders, and maintain such conditions while this cause is held in abeyance, or, in the alternative,

to pay to the employees of plaintiffs affected adversely by plaintiffs' General Orders 119 and 120 the same amounts of money that they would have paid had the changes made by plaintiffs' General Orders 119 and 120 not been made, be, and the same is hereby, in all things denied.

Entered as of Jan. 5 at Dallas, Texas, January 13, 1959.

T. Whitfield Davidson, United States District Judge.

Approved as to Form

.....

.....

Attorneys for Plaintiffs

Willis & Willis, By Hart Willis, Jr., William P. Fonville, Attorneys for Defendants.

[fol. 140]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

Civil Action No. 8061

[Title omitted]

NOTICE OF APPEAL OF MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, et al.—Filed January 13, 1959

Notice is hereby given that Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, plaintiffs in the above entitled Civil Action No. 8061, hereby appeal to the United States Court of Appeals for the Fifth Circuit from the order entered in said action on January 13, 1959, by the District Court of the United States for the Northern District of Texas, Dallas Division, which said order reads as follows:

> "On January 5, 1959, came on to be heard the motion of plaintiffs for an order staying the enforcement of that part of the order of this Court entered herein on

December 18, 1958, providing that the plaintiffs restore the conditions which were affected by their General Orders 119 and 120, referred to in the complaint as amended, to the conditions which existed before such orders became effective, and maintain such conditions during the period this cause is continued and held in abeyance in accordance with said order of December 18, 1958, or, in the alternative, if plaintiffs do not elect to restore and maintain such conditions, then plaintiffs pay to the employees of plaintiffs affected adversely by said General Orders the same amounts of money that they would have paid had the changes made by such orders not been made. Came the plaintiffs, by and through their attorneys. Came the defendants, by and through their attorneys. The Court heard the motion and the statements and argument of counsel.

"On December 18, 1958, came on to be heard plaintiffs' application for a preliminary injunction in this cause. The Court granted plaintiffs leave to amend the complaint. Defendants moved to dismiss the complaint. The Court heard the motion to dismiss and the statements and argument of counsel upon the motion to dismiss and upon the pleading as a whole. The Court was of the opinion that, in an effort to get the parties together and to afford plaintiffs and defendants an [fol. 141] opportunity to settle the controversy between them or to agree upon arbitration looking to settlement thereof, and in the event the parties should fail to agree upon settlement or arbitration looking to settlement, to give the various bodies to which plaintiffs have referred the controversy an opportunity to reach a decision upon the matters submitted, the Court should hold this cause in abeyance pending such settlement, arbitration, or decisions upon such submissions, and during such period enjoin such strike on the part of the defendants and the employees of the plaintiffs represented by the defendants on account of the controversy herein on condition, and only on condition, that plaintiffs restore and maintain the conditions which existed prior to the issuance of plaintiffs' General Orders 119 and 120 effecting changes which gave rise to

the controversy between plaintiffs and defendants on account of which the strike involved herein was called, or, in the alternative, pay to the employees of plaintiffs adversely affected by such General Orders the same amounts of money they would have paid had the changes made by such General Orders not been made. Accordingly, the Court entered herein its order of December 18, 1958. It was the intendment of the order, and the Court so declares, that defendants and the employees of plaintiffs represented by defendants should be enjoined from striking on account of the controversy involved herein on condition, and only on condition, that the plaintiffs restore the conditions affected by General Orders 119 and 120 to the conditions which existed prior to the effective date of such orders, and maintain such conditions during the period this cause was continued and held in abeyance or, in the alternative, pay the employees of plaintiffs adversely affected by such orders the same amounts of money they would have paid had the changes made by such General Orders not been made. The injunction against the strike was granted only on condition that plaintiffs restore and maintain such conditions or, in the alternative, make said payments. Plaintiffs have now filed notice of appeal from that part of the order of December 18, 1958, imposing the conditions upon which the injunction against the strike, the benefits of which injunction plaintiffs seek to retain, was issued. Plaintiffs now move for an order staying enforcement of that part of the order of December 18, 1958, requiring restoration and maintenance of the conditions which existed prior to the initiation of the controversy between plaintiffs and defendants on account of which the strike involved herein was called or, in the alternative, payments. Plaintiffs seek to have the injunction issued herein in their favor maintained and at the same time to avoid the conditions upon which such injunction was issued by this Court. The Court is of the opinion that to stay the enforcement of the conditions upon which this Court granted the injunction in favor of

plaintiffs would constitute a frustration of the order of the Court granting the injunction herein, would be inequitable, and would constitute a miscarriage of justice.

"It is, therefore, ORDERED that the motion of plaintiffs for an order staying the enforcement of that part of the order entered herein on December 18, 1958, requiring plaintiffs, as a condition of the injunction herein, to restore the conditions which were affected by plaintiffs' General Orders 119 and 120 to the conditions which existed prior to the effective date of such orders, and maintain such conditions while this cause is held in abeyance, or, in the alternative, to pay to the employees of plaintiffs affected adversely by plaintiffs' [fol. 142] General Orders 119 and 120 the same amounts of money that they would have paid had the changes made by plaintiffs' General Orders 119 and 120 not been made, be, and the same is hereby, in all things denied."

Dated January 13, 1959.

W. A. Thie, M. E. Clinton, M. W. Reeves, Barrett Building, Denison, Texas;

O. O. Touchstone, 405 Southland Life Building, Dallas 1, Texas,

Attorneys for Appellants, Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas.

[fol. 143] Cost Bond—Filed January 13, 1959 (omitted in printing).

[fol. 149]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

Civil Action No. 8061

[Title omitted]

NOTICE OF APPEAL OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS, et al.—Filed January 15, 1959

Notice is hereby given that The Brotherhood of Locomotive Engineers; The Brotherhood of Locomotive Firemen and Enginemen; The Brotherhood of Railroad Trainmen; The Order of Railway Conductors and Brakemen; Divisions Nos. 177, 568 and 736 of The Brotherhood of Locomotive Engineers; Local Lodges Nos. 8, 632, and 776 of The Brotherhood of Locomotive Firemen and Enginemen; Local Lodges Nos. 15, 81, 499, 671, and 822 of the Brotherhood of Railroad Trainmen; Divisions Nos. 53 and 515 of the Order of Railway Conductors and Brakemen; all members and officers of said Brotherhoods, Order, Divisions, and Local Lodges; H. C. Hobart, individually, and as Assistant Grand Chief Engineer of The Brotherhood of Locomotive Engineers; M. F. Rister individually, and as Vice Chairman of The Brotherhood of Locomotive Engineers; R. McDaniel, individually, and as Local Chairman of Division No. 177 of The Brotherhood of Locomotive Engineers; W. M. Kelly individually, and as Chief Engineer of Division No. 177 of The Brotherhood of Locomotive Engineers; J. H. Williams individually, and as Local Chairman of Division No. 568 of The Brotherhood of Locomotive Engineers; J. L. Scott individually, and as Chief Engineer of Division No. 568 of The Brotherhood of Locomotive Engineers; A. M. Hanks individually, and as President of Division No. 736 of The Brotherhood of Locomotive En-

[fol. 150] gineers; A. B. Peterson individually, and as Local Chairman of Division No. 736 of The Brotherhood of Locomotive Engineers; R. W. Wilson individually, and as Secretary of Division No. 736 of The Brotherhood of Loco-

motive Engineers; R. G. Rogerson individually, and as Vice President of The Brotherhood of Locomotive Firemen and Enginemen; R. M. Brady individually, and as General Chairman of The Brotherhood of Locomotive Firemen and Enginemen; L. J. Derichweiler individually, and as Second Vice Chairman of The Brotherhood of Locomotive Firemen and Enginemen, and as Local Chairman of Local Lodge No. 776 of said Brotherhood; O. W. Wells individually, and as Secretary-Treasurer of The Brotherhood of Locomotive Firemen and Enginemen, and as Local Chairman of Local Lodge No. 8 of said Brotherhood; H. L. Duncan individually, and as President of Local Lodge No. 8 of The Brotherhood of Locomotive Firemen and Enginemen; C. R. Gullahorn individually, and as President of Local Lodge No. 632 of The Brotherhood of Locomotive Firemen and Enginemen; G. W. Nelson individually, and as Local Chairman of Local Lodge No. 632 of The Brotherhood of Locomotive Firemen and Enginemen; C. L. Hamrick individually, and as Secretary of Local Lodge No. 632 of The Brotherhood of Locomotive Firemen and Enginemen; H. L. Ditto individually, and as President of Local Lodge No. 776 of The Brotherhood of Locomotive Firemen and Enginemen; E. B. Boggs individually, and as Vice President of The Brotherhood of Railroad Trainmen; Charles Luna individually, and as Vice President of The Brotherhood of Railroad Trainmen; C. L. Flanery individually, and as General Chairman of The Brotherhood of Railroad Trainmen; B. G. Ard individually and as President of Local Lodge No. 15 of The Brotherhood of Railroad Trainmen; M. J. Brady, Jr. individually, and as Local Chairman of Local Lodge No. 15 of The Brotherhood of Railroad Trainmen; J. C. Story individually, and as Local Chairman of Local Lodge No. 15 of The Brotherhood of Railroad Trainmen; W. J. Nelms individually, and as Local Chairman of Local Lodge No. 81 of The Brotherhood of [fol. 151] Railroad Trainmen; G. L. Strother individually, and as President of Local Lodge No. 499 of The Brotherhood of Railroad Trainmen; L. A. Scherff individually, and as Local Chairman of Local Lodge No. 499 of The Brotherhood of Railroad Trainmen; H. W. Coffman individually, and as Secretary of Local Lodge No. 499 of The Brother-

hood of Railroad Trainmen; C. B. Huffaker individually, and as Local Chairman of Local Lodge No. 671 of the Brotherhood of Railroad Trainmen; C. B. Prichard individually, and as President of Local Lodge No. 822 of The Brotherhood of Railroad Trainmen; S. E. Rainey individually, and as Local Chairman of Local Lodge No. 822 of The Brotherhood of Railroad Trainmen; B. W. Foster individually, and as General Chairman of The Order of Railway Conductors and Brakemen; F. M. Scoggin individually, and as Local Chairman of Division No. 53 of The Order of Railway Conductors and Brakemen; F. L. Luckie individually, and as Local Chairman of Division No. 53 of The Order of Railway Conductors and Brakemen; C. S. Cowell individually, and as Chief Conductor of Division No. 53 of The Order of Railway Conductors and Brakemen; R. I. England individually, and as President of Division No. 515 of The Order of Railway Conductors and Brakemen; Chris Ausland individually, and as Secretary of Division No. 515 of The Order of Railway Conductors and Brakemen; W. T. Lowery, J. W. Reece, W. M. Young, H. N. Brown, E. D. Bunt Jr., D. D. Booten, A. C. Bills, F. A. Ramsey, C. E. Lievsay, C. W. Redmon, W. A. Newcomb, R. S. Bradshaw, H. E. Oldham, C. H. Preston, F. N. Weems, J. C. Fielder, L. S. Evans, R. D. Pearson, F. Douglas, W. J. Seabaugh, R. P. Cullar, C. L. Cline, J. T. Huseman, J. L. Scott, P. W. Ashburn, C. R. Hauschild, R. M. Clift, B. O. Bilderback, W. F. Mathis, W. L. Trammell, S. H. Squires, R. F. Brown, G. H. Butcher, F. Johnson, T. E. Penn, W. M. Kelly, C. H. Wade, W. A. Fowler, A. G. Malear, L. C. Rodgers, C. E. Greenwood, A. R. Ashley, A. B. Peterson, W. G. Anderson, E. P. Pattison, C. P. [fol. 152] Brown, D. W. Bunch, J. C. Coker, R. J. Corcoran, B. T. Crosskno, R. L. Davault, R. B. Davis, S. E. Hall, H. W. Kellum, D. D. Kent, J. E. McClain, M. L. McKamy, T. M. Miller, G. M. Setzer, F. I. Roth, E. L. Wood, H. A. Shoemaker, J. T. Barnhill, R. F. Williams, Glenn Flaherty, R. C. Koiner, R. W. Scoggins, W. R. Byrd, C. H. Browder, R. M. Boyd, B. F. Blanton, T. B. Nelson, Jr., J. L. Wineinger, W. H. Dobbins, R. E. Morrison, Otto Mund, Jr., B. A. Preston, H. M. Tomlinson, W. T. Walker, A. H. Eakin,

C. W. Tignor, J. W. Kennedy, C. S. Taylor, L. T. Silk, G. W. Nelson, D. L. Windsor, Ray Welch, F. E. Jenkins, Lester Ingle, W. S. Rodgers, C. D. Horn, W. A. Carter, S. O. Bissett, Jr., C. W. Storrer, J. O. Flint, F. C. McGuire, F. J. Davenport, W. H. Chappell, R. Peters, O. L. Haggard, W. D. Nortrip, G. W. Morgan, J. D. O'Connor, W. G. Green, R. F. Huffaker, G. W. Shackleford, A. L. Felton, C. R. Senter, J. L. Bright, W. R. Chapman, Jack Moore, D. S. Simpson, R. O. Tune, A. L. Riddle, L. M. Green, H. L. Powell, F. R. McKinney, Dave Hopkins, J. C. Poole, H. F. Hale, R. V. Gordy, L. L. Owens, F. L. Luckie, D. L. Smith, J. C. Volpert, M. B. Hodge, R. T. Burkett, J. K. Sheeler, G. W. Shreves, J. L. D. Snyder, F. W. Irwin, H. H. Wright, A. L. Barr, E. A. Blair, W. C. Rutledge, W. E. Nichols, P. George, C. A. Johnson, F. X. Ford, A. W. Parker, H. T. Shelton, T. E. Eldridge, W. E. Smith, John Ambrose, J. A. Morgan, S. J. Harmon, R. Thompson, S. D. Scherff, R. L. Smith, B. McCoy, J. J. Cook, R. A. Donahue, J. George, G. T. Latham, R. P. Carter, John Hopkins, C. M. McManis, R. L. Drumb, L. Melson, Jack Oram, E. E. Smart, G. E. Dusenberry, M. D. Harvey, J. O. Williams, A. L. Hammock, L. A. Scoggins, H. T. Hoskins, W. T. Rutherford, C. E. Harris, J. H. Fairbanks, A. H. Allen, R. D. Jones, H. H. Brigham, P. J. Riley, B. Thomason, I. W. Lord, C. G. Allen, M. A. Berry, J. I. Burt, W. J. [fol. 153] Dowell, and L. A. Scherff, defendants in above entitled Civil Action No. 8061, hereby appeal to the United States Court of Appeals for the Fifth Circuit from that portion of the Order entered in said action on December 18, 1958 by the District Court of the United States for the Northern District of Texas, Dallas Division, which reads as follows:

> "The Court is of the opinion . . . that defendants and the employees of plaintiffs represented by defendants should not strike on account of the dispute and controversy between plaintiffs and defendants herein."
>
> "It is further ordered that the defendants and employees of plaintiffs represented by defendants be and they are hereby enjoined from striking during such

period on account of the controversy and dispute involved herein between plaintiffs and defendants."

Dated January 15, 1959.

William P. Fonville, 2232 Republic National Bank Bldg., Dallas 1, Texas;

Willis & Willis, By J. Hart Willis, 1408 Tower Petroleum Building, Dallas 1, Texas,

Attorneys for Appellants, Brotherhood of Locomotive Engineers et al.

[fol. 154] Cost Bond—Filed January 15, 1959 (omitted in printing).

[fol. 160]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

Civil Action No. 8061

[Title omitted]

DESIGNATION OF CONTENTS OF RECORD ON APPEAL—
Filed January 16, 1959

Come now Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, plaintiffs in the above entitled and numbered cause, and designate the complete record and all of the proceedings, evidence and briefs in said cause as the contents of the record on their appeals dated December 29, 1958, and January 13, 1959, to the United States Court of Appeals for the Fifth Circuit, to wit:

1. Complaint, filed November 6, 1958.

2. Temporary Restraining Order, filed November 6, 1958.

3. Temporary Restraining Order Bond, filed November 6, 1958.

4. Motion to Dismiss Temporary Restraining Order and Complaint, filed November 7, 1958.

5. Transcript of Proceedings on November 7, 1958.

6. Order Extending Temporary Restraining Order, filed November 7, 1958.

7. Stipulation that the temporary restraining order may be extended to 10.00 o'clock A. M. on December 18, 1958; that the temporary restraining order bond may be continued in effect during such extension; and that the hearing on plaintiffs' application for a preliminary injunction may be reset for 10.00 o'clock A. M. on December 18, 1958, filed November 11, 1958.

8. Order extending temporary restraining order to 10.00 o'clock A. M. on December 18, 1958, continuing temporary restraining order bond in effect during such extension, and resetting hearing on plaintiffs' application for a preliminary injunction for 10.00 o'clock A. M. on December 18, 1958, and extending the time for filing briefs to December 5, [fol. 161] 1958, filed November 11, 1958.

9. Defendants' Answer, filed November 13, 1958.

10. Stipulation that the time for filing briefs may be extended to December 12, 1958, filed December 3, 1958.

11. Order extending time for filing briefs to December 12, 1958, filed December 3, 1958.

12. Motion for Order Permitting Plaintiffs to Amend and Supplement Complaint, filed December 12, 1958.

13. Amendment to Motion for Order Permitting Plaintiffs to Amend and Supplement Complaint, and attached exhibits, filed December 17, 1958.

14. Plaintiffs' Brief on Jurisdiction, filed December 12, 1958.

15. Defendants' Brief, filed December 12, 1958.

16. Order Granting Plaintiffs Leave to Amend and Supplement Complaint, entered January 13, 1959, as of December 18, 1958, filed January 13, 1959.

17. Amendment and Supplement to Complaint, and attached exhibits, filed December 18, 1958.

18. Affidavit of A. F. Winkel, filed December 18, 1958.

19. Transcript of Proceedings on December 18, 1958.

20. Order filed December 18, 1958.

21. Notice of Appeal, filed December 29, 1958.

22. Cost bond, filed December 29, 1958.

23. Motion for Stay Order, filed December 29, 1958.

24. Amendment and Supplement to Motion for Stay Order, filed January 2, 1959.

25. Brief in Support of Motion for Stay Order as Amended, filed January 5, 1959.

26. Transcript of Proceedings on January 5, 1959.

[fol. 162] 27. Plaintiffs' "Motion for the Entry of the Herewith Tendered Order" and form of order attached to said motion, filed January 12, 1959.

28. Transcript of Proceedings on January 13, 1959.

29. Order denying Motion for Stay Order as Amended, filed January 13, 1959, and entered as of January 5, 1959.

30. Notice of Appeal filed January 13, 1959.

31. Cost Bond filed January 13, 1959.

Dated January 15, 1959.

W. A. Thie, M. E. Clinton, M. W. Reeves, Barrett Building, Denison, Texas;

O. O. Touchstone, 405 Southland Life Building, Dallas 1, Texas,

Attorneys for Plaintiffs.

Certificate of Service (omitted in printing).

[fol. 163] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION
Civil Action 8061

[Title omitted]

COUNTER DESIGNATION OF ADDITIONAL PORTION OF RECORD ON APPEAL—Filed January 16, 1959

Appellees and cross appellants, defendants, hereby designate the following portions of the record and proceedings, in addition to those designated by appellants, to be contained in the record on appeal in this action.

1.

Notice of appeal, filed herein on January 15, 1959, by the defendants, The Brotherhood of Locomotive Engineers, The Brotherhood of Locomotive Firemen and Enginemen, The Brotherhood of Railroad Trainmen, et al.

2.

Appeal bond, filed herein on January 15, 1959, by the above named defendants.

[fol. 164] 3.

This counter designation.

This designation as to additional contents of the record to be certified by the Clerk of the United States District Court for the Northern District of Texas, Dallas Division, is being filed and served pursuant to Rule 75(a) of the Federal Rules of Civil Procedure.

William P. Fonville, 2232 Republic National Bank Building, Dallas 1, Texas;

Willis & Willis, By J. Hart Willis, Jr., 1408 Tower Petroleum Building, Dallas 1, Texas, Attorneys for Appellants, Brotherhood of Locomotive Engineers et al.

Certificate of Service (omitted in printing).

[fol. 165] Clerk's Certificate to foregoing transcript omitted in printing.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION
Civil Action No. 8061

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, et al.,
Plaintiffs,

VS.

THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS, et al.,
Defendants.

[fol. 167]
EXHIBIT A TO AMENDMENT AND SUPPLEMENT TO COMPLAINT

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION
Docket No. .....

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY and
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

VS.

THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS, THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, THE BROTHERHOOD OF RAILROAD TRAINMEN, and THE ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN.

Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas respectfully refer the folowing disputes to the First Division of the National Railroad Adjustment Board.

PARTIES

The parties to the disputes are Missouri-Kansas-Texas Railroad Company, Missouri-Kansas-Texas Railroad Company of Texas, The Brotherhood of Locomotive Engineers, The Brotherhood of Locomotive Firemen and Enginemen, The Brotherhood of Railroad Trainmen, and The Order of Railway Conductors and Brakemen.

STATEMENT OF CLAIM

The Brotherhood of Locomotive Engineers, The Brotherhood of Locomotive Firemen and Enginemen, The Broth-
[fol. 168] erhood of Railroad Trainmen, and The Order of Railway Conductors and Brakemen claim that Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas,—

(1) Violated Articles 34 and 52 of the agreement effective October 1, 1918, as amended, between the petitioning carriers and The Brotherhood of Locomotive Engineers;

(2) Violated Articles 10, 11, 59 and 60 of the agreement effective November 1, 1929, as amended and revised, between the petitioning carriers, The Brotherhood of Railroad Trainmen, and The Order of Railway Conductors and Brakemen;

(3) Violated Article 6 of a National Agreement dated May 23, 1952, between The Order of Railway Conductors, now The Order of Railway Conductors and Brakemen, and representatives of numerous railroad companies, including the petitioning carriers;

(4) Violated Article 4 of a National Agreement dated May 23, 1952, between the Brotherhood of Locomotive Engineers and representatives of numerous railroad companies, including the petitioning carriers;

(5) Violated Article 4 of a National Agreement dated May 23, 1952, between The Brotherhood of Locomotive Firemen and Enginemen, and representatives of numerous railroad companies, including the petitioning carriers;

(6) Violated Article VIII (b) of a Mediation Agreement (Case No. A-5464) dated July 18, 1957, between The Brotherhood of Locomotive Engineers and representatives of numerous railroad companies including the petitioning carriers;

(7) Violated Article VIII (b) of a Mediation Agreement (Case No. A-5241) dated November 20, 1956,

between The Brotherhood of Locomotive Firemen and Enginemen and representatives of numerous railroad companies, including the petitioning carriers;

(8) Violated Article VIII (b) of a Mediation Agreement (Case No. A-5248) dated April 5, 1957, between The Brotherhood of Railroad Trainmen and representatives of numerous railroad companies, including the petitioning carriers;

(9) Violated Article V (b) of a Mediation Agreement (Case No. A-5294) dated June 12, 1957, between The Order of Railway Conductors and Brakemen and representatives of numerous railroad companies, including the petitioning carriers; and

[fol. 169] (10) Violated the provisions of the Railway Labor Act, and particularly the provisions of Section 6 of that Act;

when they, by their General Order No. 119 dated October 2, 1958, and effective at 12.01 A. M. on October 19, 1958, rearranged assigned way freight service between North Yard (Wichita Falls, Texas) and Forgan, Oklahoma, as follows:

(a) Cancelled existing way freight assignments;

(b) Assigned two wayfreight crews to operate between North Yard (Wichita Falls, Texas) and Elk City, Oklahoma, a distance of 134.2 miles, daily except Sunday, with North Yard the home terminal of both crews, and with Sunday layover at North Yard for one crew and at Elk City for the other;

(c) Assigned one wayfreight crew to operate from Elk City, Okhahoma, to Forgan, Oklahoma, a distance of 168 miles, on Mondays, Wednesdays and Fridays, and from Forgan to Elk City on Tuesdays, Thursdays and Saturdays, with Elk City the home terminal and with Sunday layover at Elk City; and

when they, by their General Order No. 120 dated October 2, 1958, and effective at 12.01 A. M. on October 19, 1958, abolished Altus, Oklahoma and Woodward, Oklahoma, as

away-from-home terminals for unassigned crews in through freight service and in lieu thereof established Elk City, Oklahoma, and Forgan, Oklahoma, as away-from-home terminals for such crews, leaving Wichita Falls as the home terminal for such crews.

STATEMENT OF FACTS

This proceeding involves a line of the petitioning railroad companies extending from North Yard (Wichita Falls, Texas) to Forgan, Oklahoma, a distance of 302 miles, being the Western Subdivision of the Southern Division of petitioners' lines of railroad.

[fol. 170] This 302-mile line now constitutes and always has constituted a separate seniority district for petitioners' engineers, firemen, conductors and brakemen, and each of such employees holding seniority on such district now has and always has had the right to exercise such seniority anywhere on such district and to perform any needed service over all or any part of said district to which he is or was entitled by virtue of such seniority.

Prior to October 19, 1958, way freight crews on this line were assigned as follows:

> Two crews between North Yard (Wichita Falls, Texas) and Welon (Altus, Oklahoma), a distance of 75.9 miles, daily except Sunday, with North Yard the home terminal for both crews, and with Sunday layover at North Yard for one crew and at Welon for the other crew.
>
> One crew from Welon (Altus, Oklahoma) to Elk City, Oklahoma, and return, a distance of 58.3 miles in each direction, daily except Saturday, with Welon the home terminal and with Saturday layover at Welon;
>
> One crew from Elk City, Oklahoma, to Guest (Woodward, Oklahoma), a distance of 84.8 miles, on Mondays, Wednesdays and Fridays, and from Guest to Elk City on Tuesdays, Thursdays and Saturdays, with Elk City the home terminal and with Sunday layover at Elk City; and

One crew from Guest (Woodward, Oklahoma) to Forgan, Oklahoma, a distance of 83.2 miles, on Mondays, Wednesdays and Fridays, and from Forgan to Guest on Tuesday, Thursdays and Saturdays, with Guest the home terminal and with Sunday layover at Guest.

Effective at 12.01 A. M. on October 19, 1958, the petitioning carriers rearranged assigned way freight service between North Yard (Wichita Falls, Texas) and Forgan, Oklahoma, as follows:

[fol. 171] Assigned two wayfreight crews to operate between North Yard (Wichita Falls, Texas) and Elk City, Oklahoma, a distance of 134.2 miles, daily except Sunday, with North Yard the home terminal of both crews, and with Sunday layover at North Yard for one crew and at Elk City for the other; and

Assigned one wayfreight crew to operate from Elk City, Oklahoma to Forgan, Oklahoma, a distance of 168 miles, on Mondays, Wednesdays and Fridays, and from Forgan to Elk City on Tuesdays, Thursdays and Saturdays, with Elk City the home terminal and with Sunday layover at Elk City.

This rearrangement of way freight service was made in accordance with General Order No. 119 of the petitioning carriers dated October 2, 1958, a copy of which is attached hereto and made a part hereof as Exhibit 1.

Prior to October 19, 1958, North Yard (Wichita Falls, Texas) was the home terminal and Altus, Oklahoma, and Woodward, Oklahoma, were the bulletined away-from-home terminals for unassigned crews in through freight service between North Yard (Wichita Falls, Texas) and Forgan, Oklahoma. Effective at 12.01 A. M. on October 19, 1958, the petitioning carriers abolished Altus, Oklahoma, and Woodward, Oklahoma, as away-from-home terminals for unassigned crews in through freight service and in lieu thereof established Elk City, Oklahoma, and Forgan, Oklahoma, as away-from-home terminals for such crews, leaving North Yard (Wichita Falls) as the home terminal for such

crews. This change in away-from-home terminals was made in accordance with General Order No. 120 of the petitioning carriers dated October 2, 1958, a copy of which is attached hereto and made a part hereof as Exhibit 2.

North Yard (Wichita Falls, Texas) now is and always has been the home terminal for unassigned crews in through [fol. 172] freight service between North Yard and Forgan, Oklahoma, and North Yard (Wichita Falls, Texas) now is and always has been the only point where an extra board has been maintained for way freight crews and unassigned through freight crews operating between North Yard (Wichita Falls, Texas) and Forgan, Oklahoma.

Assigned way freight crews now handle, and they always have handled, all of the traffic between North Yard (Wichita Falls, Texas) and Forgan, Oklahoma, except during the grain seasons in May and June of each year unassigned crews in through freight service are called as needed to handle the overflow wheat which cannot be handled by way freight crews and, when so called, unassigned through freight crews operate over all or any portion of the line without changing crews except in rare instances where an available crew is used out of an away-from-home terminal under the first-in first-out rule.

This line has been recently dieselized. Prior thereto all traffic was handled by steam locomotives which were capable of only short runs, making it necessary to have more terminals. This resulted in considerable terminal delays to through traffic because the requirements of local service made it impossible to arrange through connecting schedules. These delays resulted in the loss of traffic, principally through diversion to trucks. To overcome such losses, it was necessary to expedite the movement of traffic by extending runs and reducing the number of terminals, thereby eliminating all unnecessary terminal delays. This was made possible through the use of diesel power. These were the changes made effective on October 19, 1958.

[fol. 173] POSITION OF CARRIERS

The petitioning carriers deny that they have committed any of the violations claimed by the respondent unions.

Their position will be developed under the following headings:

I

There is no provision in any agreement with the unions which prohibited the carriers from taking the action of which the unions complain. Absent such prohibition, the carriers had the right to make such changes.

II

Express provisions of agreements with the respondent unions authorize the action of the petitioning carriers of which the respondent unions complain.

III

The provisions of Article 6 of the National Agreement dated May 23, 1952, between The Order of Railway Conductors (now The Order of Railway Conductors and Brakemen), which became an agreement between said Order and the petitioning carriers on August 1, 1952, were cancelled in the year 1954 and said provisions then ceased to constitute an agreement between said Order and the petitioning carriers.

IV

(a) The petitioning carriers have not violated the provisions of Article 6 of the National Agreement dated May 23, 1952, between The Order of Railway Conductors (now The Order of Railway Conductors and Brakemen) and representatives of numer-[fol. 173a] ous railroad companies, including the petitioning carriers, which became an agreement between said Order and the petitioning carriers on August 1, 1952, and which were cancelled in the year 1954.

(b) The petitioning carriers have not violated the provisions of Article 4 of the National Agreement dated May 23, 1952, between The Brotherhood of Locomotive Engineers and representatives of numerous railroad companies, including the peti-

tioning carriers, which became an agreement on August 1, 1952, between said Brotherhood and the petitioning carriers.

(c) The petitioning carriers have not violated the provisions of Article 4 of the National Agreement dated May 23, 1952, between The Brotherhood of Locomotive Firemen and Enginemen and representatives of numerous railroad companies, including the petitioning carriers, which became an agreement on August 1, 1952, between said Brotherhood and the petitioning carriers.

V

(a) The petitioning carriers have not violated the provisions of Article VIII (b) of the Mediation Agreement (Case No. A-5241) dated November 20, 1956, between the Brotherhood of Locomotive Firemen and Enginemen and representatives of numerous railroad companies, including the petitioning carriers.

(b) The petitioning carriers have not violated the provisions of Article VIII (b) of the Mediation Agreement (Case No. A-5248) dated April 5, 1957, between The Brotherhood of Railroad Trainmen and representatives of numerous railroad companies, including the petitioning carriers.

(c) The petitioning carriers have not violated the provisions of Article V (b) of the Mediation Agreement (Case No. A-5294) dated June 12, 1957, between The Order of Railway Conductors and Brakemen and representatives of numerous railroad companies, including the petitioning carriers.

[fol. 174] (d) The petitioning carriers have not violated the provisions of Article VIII (b) of the Mediation Agreement (Case No. A-5464) dated July 18, 1957, between The Brotherhood of Locomotive Engineers and representatives of numerous railroad companies, including the petitioning carriers.

VI

The petitioning carriers have not violated any provision of the Railway Labor Act.

Documentary evidence in exhibit form, with quotations from agreements, will be made a part of the carriers' position.

I

There is no provision in any agreement with the unions which prohibited the carriers from taking the action of which the unions complain. Absent such prohibition, the carriers had the right to make such changes.

The agreements between the petitioning railroads and the respondent unions, on file with the Board, may be searched in vain for any provision which prohibited the carriers from making the changes of which the unions complain. In the absence of such prohibition, the carriers had the right to make such changes. This has been made abundantly clear by many awards of the First Division. We quote from a few of them, viz:

Award 15636, Docket 24703, (July 28, 1952)
First Division, with Referee Edward F. Carter

"It is elemental that the efficient and safe operation of a railroad is the prerogative of management except to the extent that it has been limited by law and the contracts which it has made." (Award, page 7; Bound Volume 108, page 413).

[fol. 175] Award 16032, Docket 25436 (January 27, 1953)
First Division
Engineers-Firemen Supplemental Board with
Referee Alfred A. Colby

"The Board does not function in a vacuum. We are well aware that enlightened railroad labor organizations recognize the principle that the schedule agreements do not deny to the carrier the right to manage and operate its properties economically and efficiently and that the carrier is also under legal obligation to

do so. The carrier's fundamental management rights are restricted only to the extent that they are limited or surrendered in the schedule agreements." (Award, page 19; Bound Volume 112, page 33).

Award 16188, Docket 27267 (March 19, 1953)
First Division
Engineers-Firemen Supplemental Board with
Referee Charles Loring

"These claimants base their claims upon the contention that the carrier had no right to cancel established assignments and bulletin new assignments. No contract or rule has been cited to us to sustain such a claim. The carriers have the prerogative to arrange their train assignments to conform to the demands of traffic. Even when an assignment was originally established as the result of a conference the rule is the same; nor is there any rule as to how long new assignments shall remain in effect. There could not well be such a rule if the carriers were to stay in business." (Award, page 7; Bound volume 113, page 622).

Award 12907, Docket 21786, (August 2, 1949)
First Division, with Referee John W. Yeager

"In the absence of a prohibitory rule it appears proper for a Carrier in order to meet changed conditions to rearrange runs and make assignments accordingly and to pay for the service on the rearranged basis according to the time and mileage of the run." (Award, page 6; Bound Volume 86, page 443).

There is no merit in the Unions' contentions that the petitioning carriers have violated Articles 34 and 52 of the agreement effective October 1, 1918, as amended, between the petitioning carriers and The Brotherhood of Locomotive Engineers. These articles read as follows:

[fol. 176] "Article 34"

"The rights to regular engines, also the right and preference to regular runs will be governed by seniority

in service on the respective districts to which engineers may be assigned.

"No freight runs or yard engine of less than six days per week will be considered for regular assignment and engineers on all such assignment will be paid for all work days not used. *Five days' notice will be given before* road service of this kind is inaugurated or *terminal is changed.* It is understood that fixture switch engineers hold seniority only in yard service." (our italics).

"Article 52"

"Engineers will not be required to make short runs in addition to their assigned service except in cases where other engineers are not available.

"If so used they will be paid therefor, at least a minimum day according to class of service and engine used.

"Arrival at a recognized terminal will complete a trip, except as provided in Article 7, Paragraph E, Articles 14, 15 and 54."

Article 34 supports the action of the petitioning carriers because it expressly provides that terminals may be changed on five days' notice, which was given. Article 52 has no application to any issue in this case. Neither article has been violated by the carriers.

There is also no merit in the Unions' contentions that the petitioning carriers have violated Articles 10, 11, 59 and 60 of the agreement effective November 1, 1929, as amended and revised, between the petitioning carriers, The Brotherhood of Railroad Trainmen, and The Order of Railway Conductors and Brakemen. Those articles read as follows:

[fol. 177] "Article 10"

"Wayfreight and Mixed Train Service"

"Rates of Pay Effective December 16, 1953"

"(a) Conductor and brakemen in wayfreight and mixed train service will be paid:

Class	Per Mile Cents	Per Day
Conductors	15.31	$15.31
Brakemen	13.82	13.82

Runs		Number of Crews	Brakemen per Crew
Baden	Franklin	2	3
Franklin	Lindale	2	3
Lindale	Parsons	1	3
Parsons	Paola	1	3
Parsons	Vinita	1	3
Muskogee	Vinita	1	3
Muskogee	McAlester	1	3
McAlester	Atoka	1	3
Atoka	Denison	1	3
Parsons	Osage	1	3
Osage	Oklahoma City	2	3
Denison	Greenville	1	3
Dallas	Greenville	1	3
Dallas	Hilo	1	3
Denison	Gainesville and return	1	3
Bellmead	Ney	1	3
Bellmead	Granger	1	3
Austin	Granger	1	3
San Antonio	New Braunfels and return	1	3
Smithville	New Braunfels	1	3
Smithville	Granger	1	3
Smithville	Houston	2	3
Wichita Falls	Gainesville	1	3
Wichita Falls	Altus	2	3

On all local runs between Parsons and Burlington, Parsons and Joplin, Bellmead and Rotan, Altus and Forgan, the third brakeman will be assigned between August 1st and March 1st, and between Franklin and Moberly the third brakeman will be assigned between

April 1st and November 1st. One conductor and three brakemen on each crew while the three crews between [fol. 178] Parsons and Junction City are continued as provided for in the Special Agreement of March 20, 1927, for three crews. When additional wayfreight crews are assigned in territory tabulated above, crew shall consist of conductor and three brakemen.

"(b) On all other wayfreight crews, the third brakeman will be assigned when business justifies the same.

"(c) Crews will make additional trips, Joplin to Galena and return, in connection with the run when necessary.

"(d) Road overtime only will be allowed on the Wilburton and Coalgate branch runs.

"(e) Trainmen on the Iola, Wilburton, Coalgate and Sherman branches wayfreight and mixed runs will make extra trips in continuous service when necessary, provided such trips are started within eight (8) hours of the time the day's work began. When an extra trip results in delaying the departure of the last run beyond eight (8) hours of the time the day's work began, the last regular run shall be deemed an extra trip, and a minimum of one hundred (100) miles will be allowed for each trip made after eight (8) hours.

(f) "*No changes will be made in the above runs,* nor number of crews assigned to them, unless business or changed conditions justify it, *nor will terminals be changed, or runs rearranged, without ten (10) days' notice.*" (our italics).

"(g) Conductors on mixed trains when required to make out baggage or mail reports will be allowed forty-three dollars and fifty cents ($43.50) per month in addition to other time made."

"Article 11"

"Trainmen on wayfreight and mixed trains required to do switching, loading or unloading wayfreight, stock or material at their terminal stations, will be allowed

overtime for such service, at the rate per hour of one eighth (⅛) of their daily rate, actual minutes to be computed. Where yardmen are on duty, trainmen will not be required to perform this service.

"Article 59"

"All rulings in reference to any article of this Agreement shall be made in writing only by the Officials sign- [fol. 179] ing this Agreement, and the General Chairmen of the O. R. C. and the B. of R. T. organizations will be furnished with a copy of such rulings, but such rulings shall not be made effective until agreed to by the parties herein mentioned."

"Article 60"

"The foregoing supersedes all previous agreements and will be effective as of November 1st, 1929, and shall remain in effect for one year from the effective date of this Agreement and thereafter until thirty (30) days' notice in writing, stating the change or changes desired, shall have been given by either party to the other.

"Other written agreements or understandings not included herein are continued in full force and effect until changed by agreement."

Article 10 supports the action of the petitioning carriers because it expressly provides that way freight runs between Wichita Falls, Texas and Forgan, Oklahoma, may be changed or rearranged, and that terminals between those points may be changed, on ten days' notice, which was given.

Article 11 has no application to any issue in this case because there is not here involved any overtime payment for services performed at terminal stations, the subject matter of this article.

Article 59 is not involved in this case because the petitioning carriers have not made any "rulings" contrary to the provisions of that article.

Article 60 has no bearing on this controversy because the action taken by the petitioning carriers did not constitute a change or changes in any agreement with any of the re-

spondent unions requiring thirty days' written notice to the unions or their prior consent.

[fol. 180] II

Express provisions of agreements with the respondent unions authorize the action of the petitioning carriers of which the respondent unions complain.

As held by the First Division, with Referee Alfred A. Colby, a carrier "is not obliged to point to any rule" which authorizes its action but, conversely, the burden is on a claimant union to show that a carrier "has surrendered or limited its basic management functions by the use of language in some rule that is susceptible of no other interpretation." (Docket 24234; Award 15119, page 5; Bound Volume 104, page 317). However, without waiving their right to stand on this rule, the petitioning carriers direct the Board's attention to the following provisions of agreements with the respondent unions, which support the actions of the carriers, viz:

Agreement with
The Brotherhood of Locomotive Engineers

"Article 34"

"The rights to regular engines, also the right and preference to regular runs will be governed by seniority in service on the respective districts to which engineers may be assigned.

"No freight run or yard engine of less than six days per week will be considered for regular assignment and engineers on all such assignments will be paid for all work days not used. *Five days' notice will be given before* road service of this kind is inaugurated or *terminal is changed.* It is understood that fixture switch engineers hold seniority only in yard service." "Page 29" (Our italics)

[fol. 181] "Article 35"

"Should service be reduced, preference of runs will be governed by seniority on the respective district;

when any run is created or vacant on district, the senior engineer on such district will have the right to such run. Should he decline to accept it, or fail to ask for it within ten days, after such vacancy occurs, he will forfeit his right to such run until it again becomes vacant, and it will be open to each engineer who is younger in service in accordance with above provisions.

"*A run will be vacant when terminal is changed to the extent of two miles or more* or when vacated by the engineer holding it, or when the regular time or mileage is changed as much as four hours." (Page 30) (Our italics)

Agreement with
The Brotherhood of Locomotive
Firemen and Enginemen

"Article 40"

"(a) When any run is created or vacant on a district, the senior fireman on such District will have the right to such run. Should he fail to make application, or bid for such run within five days after such vacancy is posted, except in the case of sickness or absence, he will forfeit his right to such run until it again becomes vacant, and it will be opened to each fireman who is younger in service in accordance with the above provisions, provided, that when a fireman exercises the privilege of taking a run created or made vacant during his sickness or absence, the run will not otherwise be reopened.

"(b) *A run will be considered vacant when terminal is changed to the extent of two or more miles,* or when vacated by the firemen holding it, or when the time or mileage is changed to the extent of 10 per cent, or when the lay over is changed as much as four hours. This last provision not to apply to yard engines.

"(See Agreement No. 41, Page 149)

"(Agreed understanding April 25, 1955, Firemen returning from vacation exercising seniority)

"We are agreeable to your request, with the understanding that it will be the responsibility of the individual employe concerned to ascertain what runs or jobs were closed to junior firemen during his absence on vacation; and that he will be required to exercise displacement rights upon his return from vacation and prior to resuming service. This will also apply to any fireman who lays off preceding and/or following continuous with his vacation period.

"(See Agreement No. 38, Page 145)"
(Page 40) (Our italics)

[fol. 182] Agreement with
The Brotherhood of Railroad Trainmen and
The Order of Railway Conductors and Brakemen

"Article 10"

"Wayfreight and Mixed Train Service"
"Rates of pay effective December 16, 1953"

• • • • • • •

"(f) No changes will be made in the above runs (between Wichita Falls and Forgan), nor number of crews assigned to them, unless business or changed conditions justify it, nor will terminals be changed, or runs rearranged, without ten (10) days' notice • • • (Page 15). (*)

(*) Full text of Article 10 appears on pages 12 and 13 of this submission.

Facts showing "business or changed conditions" appear on page 6 of this submission and are hereby adopted as part of Carriers' position.

"Article 45"

"(a) Conductors will be promoted from brakemen. In making these promotions seniority in service will govern, the Rules Examiner or Superintendent to be the judge as to qualifications, provided however, that for every two brakemen promoted one experienced conductor may be appointed from the ranks or elsewhere,

if available. There shall be a class called each year at which time all brakemen holding ten (10) years' seniority as brakemen will be given an opportunity to qualify as conductors. Should any appointed conductor or brakeman fail to pass a satisfactory examination at such class, he will be given a second examination within thirty (30) days, at which time he may have a representative of his organization present. Should he fail to qualify at this hearing he will lose all claim for promotion until the next class. This will not deprive the Company from promoting additional classes.

"(b) Conductors will hold seniority as such, according to their seniority as brakemen, in the class in which they qualify.

"(c) Appointed conductors will hold seniority rights as brakemen from the date on which they enter the service.

[fol. 183] "(d) The seniority rights of brakemen will date from date on which they first perform service as such.

"(e) Seniority will govern the preference of assignment in service, provided that senior trainmen declining closed runs will forfeit their rights to same until vacancies occur, except in reducing the force, the youngest man will be reduced from service.

"(f) It is understood that a reduction in the service of regular conductors or brakemen will be when they are reduced from regular service to extra service and men so reduced shall have the right within ten days to displace their juniors, regular extra conductors reduced to brakemen will be considered as a reduction in service.

"(g) Trainmen holding closed runs who are displaced by their seniors or whose runs have been abolished, will have the right within ten (10) days to displace any junior man.

"(h) Conductors having charge of train will be held responsible for the safe management of same and shall

have the right to place their trainmen where, in their judgment, they can render the best service. It being understood that as a general rule the senior trainmen shall have the right to exercise his seniority with regard to position desired and in case he is denied this privilege he will be given a hearing if requested.

Brakemen while on duty will be under the orders of the conductor and conductors will be accorded the right to object to any brakeman for just cause, such objections to be made in writing and complaint will be investigated at once, and if sustained, complaining conductor will be given another brakeman.

"(i) *The following shall be known as closed runs*: *Wayfreight and mixed runs,* assigned work trains, pilots asigned to helper engines, also passenger runs that are located away from division terminals, regular runs on the G. H. & H. and any other runs located away from a district terminal, *and shall be advertised for a period of ten (10) days.*

"(See Letter Agreements March 11, 1932, January 31, 1934, October 5, 1949 and October 31, 1949, No. 10, Page 95.)

"(j) Seniority lists will be posted and copy furnished Local Chairman, January 1st and July 1st of each year.

(Page 39) (Our italics)

Freight Service Rulings

(Appendix to BRT and ORC&B Agreement)

[fol. 184] "(h) When closed runs are thrown open for advertisement due to changed conditions, etc., the regular conductor and brakeman holding such run at that time will be permitted to hold run during advertisement.

"(i) It is agreed that when a terminal is changed for a closed run or a run changed from day to night, such run will be advertised." (Page 49)

The "held away from home terminal" rules also support the action of the petitioning carriers. Those rules read as follows:

"Article 11"

"Held Away-From-Home Terminal"
(The Brotherhood of Locomotive Engineers)

"(a) Engineers in pool freight and in unassigned service held at other than home terminal will be paid continuous time for all time so held after the expiration of sixteen hours from the time relieved from previous duty, at the regular rate per hour paid them for the last service performed. If held sixteen hours after the expiration of the first twenty-four hour period, they will be paid continuous time for the time so held during the next succeeding eight hours, or until the end of the second twenty-four hour period, and similarly for each twenty-four hour period thereafter.

"(b) Should an engineer be called for service or ordered to deadhead after pay begins, the held-away-from-home terminal time shall cease at the time pay begins for such service or, when deadheading, at the time the train leaves the terminal, except that in no event shall there be duplication of payment for deadhead time and held-away-from-home terminal time.

"(c) Payments accruing under this rule shall be paid for separate and apart from pay for the subsequent service or deadheading.

"(d) For the purpose of applying this rule, the *railroad will designate a home terminal* for each crew in pool freight and in unassigned service." (National Agreement August 11, 1948—page 15) (Our italics)

"Article 11"

"Held Away From Home Terminal"
(The Brotherhood of
Locomotive Firemen and Enginemen)

"(a) (National Agreement, August 11, 1948) Firemen, and helpers on other than steam power, in pool freight and in unassigned service held at other than home terminal will be paid continuous time for all time so held after the expiration of sixteen hours from the time relieved from previous duty, at the regular rate per hour paid them for the last service performed. If held sixteen hours after the expiration of the first [fol. 185] twenty-four hour period, they will be paid continuous time for the time so held during the next succeeding eight hours, or until the end of the second twenty-four hour period, and similarly for each twenty-four hour period thereafter.

"(b) Should fireman, or helper on other than steam power, be called for service or ordered to deadhead after pay begins, the held-away-from-home-terminal time shall cease at the time pay begins for such service or, when deadheading, at the time the train leaves the terminal except that in no event shall there be duplication of payment for deadhead time and held-away-from-home terminal time.

"(c) Payments accruing under this rule shall be paid for separate and apart from pay for the subsequent service or deadheading.

"(d) For the purpose of applying this rule, the railroad will designate a home terminal for each crew in pool freight and in unassigned service." (Page 17)

"Article 34"

"(National Agreement November 21, 1947)"
(The Brotherhood of Railroad Trainmen)
(The Order of Railway Conductors and Brakemen)

"Conductors and Trainmen in pool freight and in unassigned service held at other than home terminal will

be paid on the minute basis for the actual time so held after the expiration of sixteen hours from the time relieved from previous duty at a rate per hour of 1/8th of the daily rate paid them for the last service performed. If held sixteen hours after the expiration of the first twenty-four hour period from the time relieved, they will be paid for the actual time so held during the next succeeding eight hours, or until the end of the second twenty-four hour period, and similarly for each twenty-four hour period thereafter.

"Should a Conductor or Trainman be called for service or ordered to deadhead after pay begins, held away from home terminal time shall cease at the time pay begins for such service or deadheading.

"Payments accruing under this rule shall be paid for separate and apart from pay for the subsequent service or deadheading.

"For the purpose of applying this rule the railroad will designate a home terminal for each crew in pool freight and in unassigned service." (Page 30)

[fol. 186] These agreement rules and freight service rulings authorize the abolishment or rearrangement of runs when, in the judgment of management, this is made necessary or desirable for business reasons, or because of changed conditions, and such rules and rulings authorize changes in terminals deemed necessary or desirable by management as a result of the abolishment or rearrangement of such runs.

III

The provisions of Article 6 of the National Agreement dated May 23, 1952, between The Order of Railway Conductors (now The Order of Railway Conductors and Brakemen), which became an agreement between said Order and the petitioning carriers on August 1, 1952, were cancelled in the year 1954 and said provisions then ceased to constitute an agreement between said Order and the petitioning carriers.

The respondent unions contend that the petitioning carriers have violated Article 6 of a National Agreement dated

May 23, 1952, between The Order of Railway Conductors, now The Order of Railway Conductors and Brakemen, and representatives of numerous railroad companies, including the petitioning carriers, which became an agreement between said Order and the petitioning carriers on August 1, 1952. The violation is alleged to have occurred at 12.01 A.M., on October 19, 1958, when there became effective General Orders Nos. 119 and 120, issued by the petitioning carriers on October 2, 1958, ordering the changes of which the respondent unions complain. No such violation could, or did, occur in 1958 because said agreement of August 1, [fol. 187] 1952, was cancelled in the year 1954 when said Order and the petitioning carriers agreed upon a reprint of their agreements and agreed (1) not to reproduce the provisions of Article 6 of said National Agreement dated May 23, 1952, (2) that said provisions were rejected, and (3) that existing rules or practices were preserved. This is clearly shown by correspondence between the parties and by the 1954 revision of the appendix to the agreement between the petitioning carriers, The Brotherhood of Railroad Trainmen, and The Order of Railway Conductors, now The Order of Railway Conductors and Brakemen, viz:

> Letter dated March 1, 1954, addressed by C. L. Flanery to A. F. Winkel, asking for a conference during the week of March 22, 1954, concerning a revision of said agreement. (Exhibit 3 attached to and made a part of this submission);
>
> Letter dated March 4, 1954, addressed by A. F. Winkel to W. D. Johnson and C. L. Flanery, setting a conference for 10.00 A. M., on March 25, 1954, with respect to a revision of said agreement. (Exhibit 4 attached to and made a part of this submission);
>
> Letter dated September 17, 1954, addressed by A. F. Winkel to W. D. Johnson and C. L. Flanery, enclosing to each of them thirty printer's galley proofs of said revised agreement and appendix, including revisions agreed upon between representatives of the parties in conference. On galley proofs 17 to 19, inclusive, there was reproduced those portions of said National Agree-

ment dated May 23, 1952, which remained agreements between the petitioning carriers and The Order of Railway Conductors, and on such proofs appropriate references were made to those portions of said National Agreement which were no longer agreements between the petitioning carriers and The Order of Railway Conductors. On galley proof 18, the following appears:

[fol. 188] "Article 6

Interdivisional, Interseniority District, Intradivisional, and/or Intraseniority District Service (Freight or Passenger)

(Not reproduced—Rejected and existing rules or practices preserved.)"

This identical language now appears on page 76 of the appendix to the agreement effective April 1, 1954. A copy of the above-mentioned letter, marked "Exhibit 5" is attached to and made a part of this submission; Letter dated November 15, 1954, addressed by C. L. Flanery to A. F. Winkel, acknowledging A. F. Winkel's letter of September 17 and enclosure, indicating some changes which should be made on the galley proofs (but none affecting Article 6 of said National Agreement dated May 23, 1952), and stating that C. L. Flanery was agreeable to printing at the earliest possible time. (Exhibit 6 attached to and made a part of this submission);

Letter dated November 16, 1954, addressed by W. D. Johnson to A. F. Winkel, acknowledging A. F. Winkel's letter of September 17 and enclosure, and indicating an addition which should be made to Article 44 of said agreement (Exhibit 7 attached to and made a part of this submission);

Letter dated December 29, 1954, addressed by W. D. Johnson to A. F. Winkel, agreeing to A. F. Winkel's suggested revision of the note to Article 44 of said agreement and stating "it will be agreeable to reprint

the schedule in that manner" (Exhibit 8 attached to and made a part of this submission).

It is clear from the foregoing that Article 6 of said National Agreement dated May 23, 1952, ceased to be an agreement between the petitioning carriers and The Order of Railway Conductors on April 1, 1954, and therefore could not have been violated by the Petitioning carriers on October 19, 1958, as claimed by the respondent unions.

[fol. 189] IV

(a) *The petitioning carriers have not violated the provisions of Article 6 of the National Agreement dated May 23, 1952, between The Order of Railway Conductors (now The Order of Railway Conductors and Brakemen) and representatives of numerous railroad companies, including the petitioning carriers, which became an agreement between said Order and petitioning carriers on August 1, 1952, and which were cancelled in the year 1954.*

(b) *The petitioning carriers have not violated the provisions of Article 4 of the National Agreement dated May 23, 1952, between The Brotherhood of Locomotive Engineers and representatives of numerous railroad companies, including the petitioning carriers, which became an agreement on August 1, 1952, between said Brotherhood and the petitioning carriers.*

(c) *The petitioning carriers have not violated the provisions of Article 4 of the National Agreement dated May 23, 1952, between The Brotherhood of Locomotive Firemen and Enginemen and representatives of numerous railroad companies, including the petitioning carriers, which became an agreement on August 1, 1952, between said Brotherhood and the petitioning carriers.*

Attached hereto as Exhibit 9 is a copy of Article 6 of the National Agreement dated May 23, 1952, between The Order of Railway Conductors (now The Order of Railway Conductors and Brakemen) and representatives of numerous railroad companies, which became an agreement on

August 1, 1952, between said Order and petitioning carriers. This agreement has not been violated by the petitioning carriers because, as shown in the preceding section of this submission, said agreement was cancelled in the year 1954 while the alleged violation occurred on October 19, 1958. In the alternative, the petitioning carriers allege that if said agreement was in effect on October 19, 1958, and is now in effect, which the petitioning carriers deny, then and in that [fol. 189a] event, the petitioning carriers did not violate said agreement for each and all of the following reasons:

(a) Said agreement is applicable only in those instances "where a carrier *desires to establish* interdivisional, interseniority district, intradivisional, or intraseniority district runs in passenger or freight service." (our italics);

(b) Said agreement does not apply to the runs and terminals in question and said agreement does not apply to the 302 miles of line involved because said runs were established many years prior to August 1, 1952, and said runs were not established under or pursuant to said agreement of August 1, 1952;

(c) Said agreement does not apply to terminals;

(d) Said agreement is not applicable to the runs or terminals in question, because the 302 miles of line involved between Wichita Falls, Texas, and Forgan, Oklahoma, now is and always has been a separate seniority district for engineers, firemen, conductors and brakemen with the extra board maintained at Wichita Falls, and each of such employees holding seniority on such district now has and always has had the right to exercise such seniority anywhere on such district and to perform any needed service over all or any part of said district to which he is or was entitled by virtue of such seniority;

[fol. 190] (e) Said agreement is not applicable to any terminal or run on said 302 miles of line because, as shown in Section II of this submission, the peti-

tioning carriers have and have had the right under other working agreements in effect on August 1, 1952, and now in effect, to establish, abolish, and change any terminal on said branch line and to establish, lengthen, shorten, abolish, and change, any run or runs on said branch line, and such agreements and rights were not affected by said agreement of August 1, 1952;

(f) Said agreement does not apply to the 302 miles of line involved or to the runs and terminals in question because plaintiffs did not "establish" runs within the meaning of said agreement but only reduced the number of runs which had been established for many years prior to the effective date of said agreement, lengthened the mileage of the remainder of such runs, and changed some of the terminals for the remaining runs, which is not covered or prohibited by said agreement.

For the same reasons, the petitioning carriers did not violate the provisions of Article 4 of the National Agreement dated May 23, 1952, between The Brotherhood of Locomotive Engineers and representatives of numerous railroads, including the petitioning carriers, and they did not violate the provisions of Article 4 of the National Agreement dated May 23, 1952, between The Brotherhood of Locomotive Firemen and Enginemen and representatives of numerous railroad companies, including the petitioning carriers. (Exhibits 10 and 11 attached to and made parts of this submission).

[fol. 191] Decisions of the "National Committee" (commonly called "Disputes Committee") created by Article 6 of the National Agreement dated May 23, 1952, with The Order of Railway Conductors, by Articles 4 of the National Agreements dated May 23, 1952, with The Brotherhood of Locomotive Engineers and The Brotherhood of Locomotive Firemen and Engineman support the petitioning carriers' position. Among others are the following:

Case EFCT-2-SE involving a dispute between the Tennessee Central Railway Company and the same

unions here involved, decided March 6, 1958, a copy of which is attached hereto as Exhibit 12;

Case BLE-9-W, BLF&E-13-W, ORC&B-10-W, BRT-51-W, involving a dispute between the St. Louis-San Francisco Railway Company and the same unions, decided March 6, 1958, a copy of which is attached hereto as Exhibit 13; and

Case BLE-12-W involving a dispute between The Atchison, Topeka and Santa Fe Railway Company (CL) and the Brotherhood of Locomotive Engineers, decided October 21, 1958, a copy of which is attached hereto as Exhibit 14.

These decisions show that said agreements were never intended to apply to runs established prior to the effective date of said agreements, or to runs which were or could be established under the provisions of other agreements, or, as here, to a subdivision which is a separate seniority district, with a single extra board at one point on said subdivision, and where every train service employee holding seniority on such district has the right to exercise such seniority anywhere on such district and to perform any needed service over all or any part of said district to which he is entitled by virtue of his seniority, and where crews in unassigned through freight service are not changed except in rare instances where an available crew is used out of an away-from-home terminal under first-in first-out rules. To [fol. 192] the same effect is Case BRT-57-W involving a dispute between the Chicago and North Western Railway Company and the Brotherhood of Railroad Trainmen, decided November 5, 1958, by the Committee established under the National Agreement of May 25, 1951, a copy of which decision is attached hereto as Exhibit 15.

V

(a) *The petitioning carriers have not violated the provisions of Article VIII (b) of the Mediation Agreement (Case No. A-5241) dated November 20, 1956, between The Brotherhood of Locomotive Firemen and Engine-*

men and representatives of numerous railroad companies including the petitioning carriers.

(b) *The petitioning carriers have not violated the provisions of Article VIII (b) of the Mediation Agreement (Case No. A-5248) dated April 5, 1957, between The Brotherhood of Railroad Trainmen and representatives of numerous railroad companies, including the petitioning carriers.*

(c) *The petitioning carriers have not violated the provisions of Article V (b) of the Mediation Agreement (Case No. A-5294) dated June 12, 1957, between The Order of Railway Conductors and Brakemen and representatives of numerous railroad companies, including the petitioning carriers.*

(d) *The petitioning carriers have not violated the provisions of Article VIII (b) of the Mediation Agreement (Case No. A-5464) dated July 18, 1957, between The Brotherhood of Locomotive Engineers and representatives of numerous railroads, including the petitioning carriers.*

The petitioning carriers have not violated the provisions of Article VIII (b) of the Mediation Agreement (Case No. A-5241) dated November 20, 1956, with The Brotherhood of Locomotive Firemen and Enginemen, or the provisions [fol. 193] of Article VIII (b) of the Mediation Agreement (Case No. A-5248) dated April 5, 1957, with The Brotherhood of Railroad Trainmen, or the provisions of Article V (b) of the Mediation Agreement (Case No. A-5294) dated June 12, 1957, with The Order of Railway Conductors and Brakemen, or the provisions of Article VIII (b) (Case No. A-5464) dated July 18, 1957, with The Brotherhood of Locomotive Engineers. A copy of each article is attached hereto (Exhibits 16, 17, 18 and 19, respectively).

The relevant provisions of these articles are substantially the same. They prohibit a carrier from serving any notice or progressing any pending notice (1) to decrease the rate of compensation provided in existing agreements or understandings, or (2) to eliminate agreements provid-

ing for any rate of compensation, or (3) to negotiate agreements which would have the effect of decreasing the number of employees required to be used under existing agreements. The petitioning carriers have not done any of these things and therefore the provisions of these articles are wholly irrelevant to any issue in this case.

VI

The petitioning carriers have not violated any provision of the Railway Labor Act.

Respondent unions contend that the petitioning carriers, in taking the action of which the unions complain, violated the provisions of the Railway Labor Act, but they only specify Section 6, *45 U.S.C.A. Section 156,* which reads as follows:

> [fol. 194] "Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon, as required by Section 155 of this title (Section 6 of the Act), by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board."

There is no merit in this contention. The petitioning carriers have not violated any provision of the Railway Labor

Act and they have not violated any provision of Section 6 of that Act because they have not made any change in any agreement affecting rates of pay, rules, or working conditions.

All data submitted in support of the position of the petitioning carriers have been presented to respondent unions and made a part of said disputes.

The petitioning carriers desire to present oral argument.

Dated December 10, 1958.

Respectfully submitted,

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY,
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS,

By /s/ A. F. WINKEL
Assistant General Manager

[fol. 195] EXHIBITS 1 AND 2 TO EXHIBIT A

General Orders No. 119 and No. 120. Omitted. Printed side folios 91 and 92, pages 80 and 81, supra.

[fol. 197] EXHIBIT 3 TO EXHIBIT A

Letter omitted. Printed side folio 93, page 82, supra.

[fol. 198] EXHIBIT 4 TO EXHIBIT A

Letter omitted. Printed side folio 94, page 83, supra.

[fol. 199] EXHIBIT 5 TO EXHIBIT A

Letter omitted. Printed side folio 95, page 84, supra.

[fol. 200] EXHIBIT 6 TO EXHIBIT A

Letter omitted. Printed side folio 96, page 85, supra.

[fol. 201] EXHIBIT 7 TO EXHIBIT A

Letter omitted. Printed side folio 97, page 86, supra.

[fol. 202] EXHIBIT 8 TO EXHIBIT A

Letter omitted. Printed side folio 98, page 87, supra.

[fol. 205] EXHIBIT 9 TO EXHIBIT A

Article 6

National Agreement May 23, 1952
(The Order of Railway Conductors)

ARTICLE 6—INTERDIVISIONAL, INTERSENIORITY DISTRICT, INTRADIVISIONAL, AND/OR INTRASENIORITY DISTRICT SERVICE (FREIGHT OR PASSENGER)

Where a carrier desires to establish interdivisional, interseniority district, intradivisional, or intraseniority district runs in passenger or freight service, the carrier shall give notice to the General Chairman of the organizations involved of its desire to establish such runs, giving detailed information specifying the service it proposes to establish and the conditions, if any, which it proposes shall govern the establishment of such service, the purpose being to furnish the employees with all the necessary information. In all such negotiations, the carrier and the employees should definitely recognize each other's fundamental rights and, where necessary, reasonable and fair arrangements should be made in the interest of both parties.

The parties will negotiate in good faith on such proposals and failing to agree, either party may invoke the services of the National Mediation Board. If mediation fails and the parties do not agree to arbitrate the dispute under the Railway Labor Act, then at the request of either party, the proposal will be considered by a National Committee consisting of the chiefs of the employee organizations involved and an equal number of carrier representatives who shall be members of the Carriers' Conference Committees, signatories hereto, or their successors or representatives, provided, however, that this procedure of appeal to the National Committee thus created shall not be made in any case for a period of six months from the date of this agreement.

If said National Committee does not agree upon the disposition of the proposal, then the conferees will in good faith undertake to agree upon a neutral chairman who will

sit with the Committee, hear the arguments of the parties, and make representations and recommendations to the parties with the view in mind of disposing of the controversy. In the event the parties do not agree upon such neutral chairman, then upon the request of the parties, or either of them, the National Mediation Board will appoint the chairman.

While the recommendations of the Chairman are not to be compulsory or binding as an arbitration award, yet the parties hereto affirm their good intentions of arranging through the above procedure for the final disposition of all such disputes on a fair and reasonable basis.

Every effort will be made to settle disputes over interdivisional service on the property and thus to minimize the number of appeals to the above National Committee.

This rule shall become effective August 1, 1952, except on such carriers as may elect to preserve existing rules or practices and so notify the authorized employee representatives on or before July 1, 1952.

"(Pages 18-19)"

[fol. 206] EXHIBIT 1C TO EXHIBIT A

Article 4

National Agreement May 23, 1952
(The Brotherhood of Locomotive Engineers)

ARTICLE 4—INTERDIVISIONAL, INTERSENIORITY DISTRICT, INTRADIVISIONAL, AND/OR INTRASENIORITY DISTRICT SERVICE (FREIGHT OR PASSENGER)

Where a carrier desires to establish interdivisional, interseniority district, intradivisional, or intraseniority district runs in passenger or freight service, the carrier shall give notice to the General Chairman of the organizations involved of its desire to establish such runs, giving detailed information specifying the service it proposes to establish and the conditions, if any, which it proposes shall govern

the establishment of such service, the purpose being to furnish the employees with all the necessary information.

The parties will negotiate in good faith on such proposals and failing to agree, either party may invoke the services of the National Mediation Board. If mediation fails and the parties do not agree to arbitrate the dispute under the Railway Labor Act, then at the request of either party, the proposal will be considered by a National Committee consisting of the chiefs of the employee organizations involved and an equal number of carrier representatives who shall be members of the Carriers' Conference Committees, signatories hereto, or their successors or representatives, provided, however, that this procedure of appeal to the National Committee thus created shall not be made in any case for a period of six months from the date of this agreement.

If said National Committee does not agree upon the disposition of the proposal, then the conferees will in good faith undertake to agree upon a neutral chairman who will sit with the Committee, hear the arguments of the parties, and make representations and recommendations to the parties with the view in mind of disposing of the controversy. In the event the parties do not agree upon such neutral chairman, then upon the request of the parties, or either of them, the National Mediation Board will appoint the chairman.

While the recommendations of the Chairman are not to be compulsory or binding as an arbitration award, yet the parties hereto affirm their good intentions of arranging through the above procedure for the final disposition of all such disputes on a fair and reasonable basis.

Every effort will be made to settle disputes over interdivisional service on the property and thus to minimize the number of appeals to the above National Committee.

This rule shall become effective August 1, 1952, except on such carriers as may elect to preserve existing rules or practices and so notify the authorized employee representatives on or before July 1, 1952.

"(Page 8)"

[fol. 207] EXHIBIT 11 TO EXHIBIT A

Article 4

National Agreement May 23, 1952
(The Brotherhood of Locomotive
Firemen and Enginemen)

ARTICLE 4—INTERDIVISIONAL, INTERSENIORITY DISTRICT, INTRADIVISIONAL, AND/OR INTRASENIORITY DISTRICT SERVICE (FREIGHT OR PASSENGER)

Where a carrier desires to establish interdivisional, interseniority district, intradivisional, or intraseniority district runs in passenger or freight service, the carrier shall give notice to the General Chairman of the organizations involved of its desire to establish such runs, giving detailed information specifying the service it proposes to establish and the conditions, if any, which it proposes shall govern the establishment of such service, the purpose being to furnish the employees with all the necessary information.

The parties will negotiate in good faith on such proposals and failing to agree, either party may invoke the services of the National Mediation Board. If mediation fails and the parties do not agree to arbitrate the dispute under the Railway Labor Act, then at the request of either party, the proposal will be considered by a National Committee consisting of the chiefs of the employee organizations involved and an equal number of carrier representatives who shall be members of the Carriers' Conference Committees, signatories hereto, or their successors or representatives, provided, however, that this procedure of appeal to the National Committee thus created shall not be made in any case for a period of six months from the date of this agreement.

If said National Committee does not agree upon the disposition of the proposal, then the conferees will in good faith undertake to agree upon a neutral chairman who will sit with the Committee, hear the arguments of the parties, and make representations and recommendations to the

parties with the view in mind of disposing of the controversy. In the event the parties do not agree upon such neutral chairman, then upon the request of the parties, or either of them, the National Mediation Board will appoint the chairman.

While the recommendations of the Chairman are not to be compulsory or binding as an arbitration award, yet the parties hereto affirm their good intentions of arranging through the above procedure for the final disposition of all such disputes on a fair and reasonable basis.

Every effort will be made to settle disputes over interdivisional service on the property and thus to minimize the number of appeals to the above National Committee.

This rule shall become effective August 1, 1952, except on such carriers as may elect to preserve existing rules or practices and so notify the authorized employee representatives on or before July 1, 1952.

"(Page 9)"

[fol. 208] EXHIBIT 12 TO EXHIBIT A

Case EFCT-2-SE

DECISION OF COMMITTEE CREATED BY
ARTICLE 11 (BLE AND BLF&E) AND ARTICLE 14 (ORC&B)
OF INTERIM AGREEMENTS AND AGREEMENTS "A"
DATED MAY 23, 1952
between employees represented by
BROTHERHOOD OF LOCOMOTIVE ENGINEERS
BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN
ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN
AND COMMITTEE CREATED BY
ARTICLE 14 OF INTERIM AGREEMENT AND AGREEMENT "A"
DATED MAY 25, 1951
between employees represented by
BROTHERHOOD OF RAILROAD TRAINMEN
and certain
EASTERN, WESTERN AND SOUTHEASTERN RAILROADS

Chicago, Illinois–March 6, 1958

PARTIES TO DISPUTE: Brotherhood of Locomotive Engineers
Brotherhood of Locomotive Firemen and Enginemen
Order of Railway Conductors and Brakemen
Brotherhood of Railroad Trainmen
and
Tennessee Central Railway Company

QUESTION AT ISSUE: Applicability of Article 4 of the Engineers' and Firemen's National Agreements and Article 6 of the Conductors' National Agreements, dated May 23, 1952, and Article 6 (revised) of the Trainmen's National Agreement, dated May 25, 1951. Specifically—

Did the Railway violate such rules when, effective November 26. 1956, without following the procedures outlined therein, it changed the run

of trains 62 and 63 (tri-weekly local freight trains serving points between Lebanon and Monterey, Tennessee), the terminals of which formerly were Nashville and Monterey, so that subsequently it operated between Lebanon and Monterey?

FINDINGS: The runs in question do not involve operations over other seniority districts. Neither do they involve operating through established terminals where such operations were otherwise prohibited by schedule rules or agreements.

DECISION: The answer to the specific "Question at Issue" is "No".

Employee Members	*Carrier Members*
/s/ R. E. DAVIDSON	/s/ FRANK J. SOCKEL
/s/ S. C. PHILLIPS	/s/ T. SHORT
/s/ J. A. PADDOCK	/s/ B. B. BRYANT
/s/ S. VANDER (Illegible)	/s/ C. A. MCREE

[fol. 209] EXHIBIT 13 TO EXHIBIT A

Case BLE-9-W
BLF&E-13-W
ORC&B-10-W
BRT-51-W

DECISION OF COMMITTEE CREATED BY
ARTICLE 11 (BLE AND BLF&E) AND ARTICLE 14 (ORC&B)
OF INTERIM AGREEMENTS AND AGREEMENTS "A"
DATED MAY 23, 1952
between employees represented by
BROTHERHOOD OF LOCOMOTIVE ENGINEERS
BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN
ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN
AND COMMITTEE CREATED BY
ARTICLE 14 OF INTERIM AGREEMENT AND AGREEMENT "A"
DATED MAY 25, 1951
between employees represented by
BROTHERHOOD OF RAILROAD TRAINMEN
and certain
EASTERN, WESTERN AND SOUTHEASTERN RAILROADS

Chicago, Illinois–March 6, 1958

PARTIES TO DISPUTE: Brotherhood of Locomotive Engineers
Brotherhood of Locomotive Firemen and Enginemen
Order of Railway Conductors and Brakemen
Brotherhood of Railroad Trainmen and
St. Louis-San Francisco Railway Company

QUESTION AT ISSUE: Does Article 4 of the Engineers' and Firemen's National Agreements and Article 6 of the Conductors' National Agreements, dated May 23, 1952, and Article 6 (revised) of the Trainmen's National Agreements, dated May 25, 1951, covering the St. Louis-San Francisco Railway Company and employees represented by the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors and Brakemen and Brotherhood of

Railroad Trainmen, require the carrier to serve notices upon the General Chairman and negotiate with the organizations before changes in working limits and layover points of local assignments of the character here involved may be made?

FINDINGS: This dispute involves the reassignment of local service on the carrier's Tupelo Subdivision between Yale (Memphis) and Amory (124 miles).

The points involved and the distances between each point are—

x	75 miles	x	26 miles	x	23 miles	x
Yale		New Albany		Tupelo		Amory

Prior to January 1, 1957, regularly assigned local 246 operated straightaway between Amory and Yale and local 247 between Yale and Amory, daily except Sunday, one crew laying over on Sunday at Amory and the other at Yale. Another assignment, the Tupelo switcher, operated daily except Sunday, in turnaround service between Amory and Tupelo.

[fol. 210] Effective January 2, 1957, these assignments were revised as follows: A turnaround local, operating daily except Sunday, between Yale and New Albany, and a turnaround local, operating daily except Sunday between Amory and New Albany. These runs do not involve operations over other seniority districts. Neither do they involve operating through established terminals where such operations were otherwise prohibited by schedule rules or agreements.

DECISION: The answer to the "Question at Issue" is "No".

Employee Members	*Carrier Members*
/s/ R. E. DAVIDSON	/s/ FRANK J. SOCKEL
/s/ S. C. PHILLIPS	/s/ T. SHORT
/s/ J. A. PADDOCK	/s/ B. B. BRYANT
/s/ S. VANDER (Illegible)	/s/ C. A. McREE

[fol. 211] EXHIBIT 14 TO EXHIBIT A

Case BLE-12-W
Article 4

DECISION OF COMMITTEE CREATED BY
ARTICLE 11 (BLE AND BLF&E) AND ARTICLE 14 (ORC&B)
OF INTERIM AGREEMENTS AND AGREEMENTS "A"
DATED MAY 23, 1952
between employees represented by
BROTHERHOOD OF LOCOMOTIVE ENGINEERS
BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN
ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN
and certain
EASTERN, WESTERN AND SOUTHEASTERN RAILROADS

Chicago, Illinois—October 21, 1958

PARTIES TO DISPUTE: Brotherhood of Locomotive Engineers
and
The Atchison, Topeka and Santa Fe Railway Company (CL)

QUESTION AT ISSUE: Did the Carrier violate Article 4 of the National Agreement dated May 23, 1952 between the Eastern, Western and Southeastern Carriers' Conference Committees and the Brotherhood of Locomotive Engineers when it changed the on and off duty point of certain road switcher assignments from Los Angeles, California to Rivera, California.

FINDINGS: This dispute involves the reassignment of road switcher service on the Carrier's Los Angeles Division. The points involved and the distances between each point are—

x 10.0 miles x 13.9 miles x
Los Angeles — Rivera — Fullerton

Prior to March 30th the service in this territory was performed by 3 road switcher assignments tying up at Los Angeles and 4 tying up at Fullerton. Effective March 30, 1958, the 3 road switcher assignments tying up at Los Angeles were cancelled and 5 road switcher assignments tying up at Rivera were established. No change was made in the 4 road switcher assignments tying up at Fullerton. These road switcher assignment do not involve operations over other seniority districts.

DECISION: If prior to the May 23, 1952 Agreement road switchers could be assigned by bulletin to operate into and out of Los Angeles under existing schedule rules, agreements or practices, the answer to the "Question at Issue" is "No". If not, Article 4 is controlling.

Employee Members	*Carrier Members*
/s/ R. E. DAVIDSON	/s/ FRANK J. SOCKEL
/s/ S. C. PHILLIPS	/s/ T. SHORT
/s/ J. A. PADDOCK	/s/ B. B. BRYANT

[fol. 212] EXHIBIT 15 TO EXHIBIT A

Case BRT-57-W

DECISION
of the
COMMITTEE ESTABLISHED BY ARTICLE 14
of
"INTERIM AGREEMENT" AND "AGREEMENT 'A'"
DATED MAY 25, 1951
between employees represented by
BROTHERHOOD OF RAILROAD TRAINMEN
and certain
EASTERN, WESTERN AND SOUTHEASTERN RAILROADS

Chicago, Illinois—November 5, 1958

PARTIES TO DISPUTE: Brotherhood of Railroad Trainmen
and
Chicago and North Western Railway Co.

STATEMENT OF CLAIM: Claim of various brakemen July 11, 1956 and subsequent dates, for a division of time at Hawarden, when operating on trains Nos. 2 and 23, Huron to Sioux City account interdivisional assignment of through mixed trains, changed to operate as an interdivisional assignment performing way-freight work Hawarden to Huron.

FINDINGS: The employees here rely on certain rules in their working agreement to support their contentions but this committee has no jurisdiction to interpret the application of such rules. The issue here is whether or not the carrier was required under the terms of Article 6 of the May 25, 1951 Agreement to negotiate before changing a mixed train, operating in interdivisional service, to a way-freight train operating in interdivisional service and the answer is no.

DECISION: Claim denied.

Employee Members	*Carrier Members*
/s/ S. VANDER (Illegible)	/s/ FRANK J. SOCKEL
/s/ W. T. (Illegible)	/s/ T. SHORT
/s/ R. C. WIRTH	/s/ C. A. MCREE

[fol. 213] EXHIBIT 16 TO EXHIBIT A

Article VIII

Mediation Agreement Case No. A-5241
(The Brotherhood of Locomotive
Firemen and Enginemen)

ARTICLE VIII—DURATION OF AGREEMENT

The purpose of this Agreement is to fix the general level of compensation during the period of this Agreement. Therefore, subject to the provisions of paragraphs (d) and (e) of this Article, and the exceptions contained in Article XI, no carrier or organization, party to this Agreement, will serve any notice or progress any pending notice to—

(a) Increase or decrease rates of pay established by Articles II, III, V and VI of this Agreement.

(b) Increase or decrease the rate of compensation provided in existing agreements or understandings, or eliminate or establish agreements providing the rate of compensation, covering overtime payments, arbitrary payments, Sunday or holiday payments, constructive allowance payments; negotiate agreements providing for paid holidays, or which would have the effect of increasing or decreasing the number of paid vacation days, or of increasing or decreasing the number of employees required to be used under existing agreements.

(c) Negotiate a hospital, medical and surgical plan covering employees and their dependents, other than a plan to be financed in the manner outlined in Article IV of this Agreement.

(d) This Article VIII will not debar management and committees on individual railroads from agreeing upon any subject of mutual interest.

(e) This Article VIII does not prevent the progressing of pending notices, the serving of notices, and the negotiation of agreements, dealing with stabilization of employment, separation allowances or other matters not

prohibited by the foregoing provisions of this Article VIII.

(f) Notwithstanding the provisions of Article XI of this Agreement, this Article VIII shall terminate effective November 1, 1959.

"(Page 4)"

[fol. 214] EXHIBIT 17 TO EXHIBIT A

Article VIII

Mediation Agreement Case No. A-5248
April 5, 1957
(The Brotherhood of Railroad Trainmen)

ARTICLE VIII—DURATION OF AGREEMENT

The purpose of this Agreement is to fix the general level of compensation during the period of this Agreement. Therefore, subject to the provisions of paragraphs (d), (e), (f), (g) and (h) of this Article and the exceptions contained in Article XI, no carrier or organization, party to this Agreement, will serve any notice or progress any pending notice to—

(a) Increase or decrease rates of pay established by Articles I, II, III, IV, V, VI and VII of this Agreement.

(b) Increase or decrease the rate of compensation provided in existing agreements or understandings, or eliminate or establish agreements providing the rate of compensation, covering overtime payments, arbitrary payments, Sunday or holiday payments, constructive allowance payments; negotiate other agreements providing for paid holidays, or agreements which would have the effect of increasing or decreasing the number of paid vacation days or holidays, or of increasing or decreasing the number of employees required to be used under existing agreements.

(c) Establish a hospital, medical or surgical plan for employees and their dependents.

(d) This Article VIII will not debar management and committees on individual railroads from agreeing upon any subject of mutual interest.

(e) This Article VIII does not prevent the initiation of new notices or the progression of pending notices of desire to negotiate a different basic rate of pay on behalf of trainmen who are assigned to road switchers and are paid on the hourly basis, provided that the term "road switcher" is limited to switchers that perform the greater part of their tour of duty in the performance of switching service and that consideration of "road switchers" is limited to service which is comparable to yard service. This Article VIII does not prevent the serving of counterproposals by the carriers directly relating to such notices.

NOTE: The term "road switcher" as used in this paragraph (e) does not include pusher, helper, mine run, belt line, transfer, work, wreck, construction, local or mixed service. If the designation by name of a run is not descriptive as to the service engaged in, it is intended that such a run will fall within its proper classification in relation to the term "road switcher" as referred to in this paragraph (e).

"(Page 7)"

[fol. 215] The initiation or progression of such notices as may be referred to herein will be confined to handling on individual properties with the understanding that if the issue is not disposed of in direct negotiations and further progression is desired, it will be submitted to arbitration under the Railway Labor Act; it being understood that the arbitration award which may be rendered will be final and binding upon the parties and further that the issue thus disposed of may not again be reopened during the term of this Agreement.

(f) This Article VIII does not prevent the initiation of new notices or progression of pending notices of

desire to negotiate a different basic rate than the standard rate applicable to switchtenders, nor does it prevent a carrier from serving a counterproposal to expand the duties and responsibilities of switchtenders so as to provide a sound foundation for granting any increases that may be agreed upon, provided (1) that such negotiations as may be conducted will be in the light of the duties and responsibilities of the individual position, and (2) if the issue is not disposed of in direct negotiation and it is desired to progress the matter further it will be submitted to arbitration under the Railway Labor Act, with the understanding that the arbitration award which may be rendered will be final and binding upon the parties and further that the issue thus disposed of will not be reopened during the term of this Agreement.

(g) This Article VIII does not prevent the serving of new notices or the progression of pending notices of the desire of the organization to adjust monthly guarantee provisions of existing rules applicable to employees engaged in short turnaround passenger service nor the serving of counterproposals by the carriers relating to such notices, it being understood that money guarantees are not to be changed other than the effect of the increases provided for in Articles I, II, III and VII of this Agreement. If the issue is not disposed of in direct negotiation and it is desired to progress the matter further, it will be submitted to arbitration under the Railway Labor Act with the understanding that the arbitration award which may be rendered will be final and binding upon the parties and further that the issue thus disposed of will not be reopened during the term of this agreement.

(h) This Article VIII does not prevent the serving of new notices or the progression of pending notices of the desire of the organization to provide for a method of pro rating the basic monthly rate to a regularly assigned dining car steward when he loses one or more trips during the month. If the issue is not

disposed of in direct negotiation and it is desired to progress the matter further, it will be submitted to arbitration under the Railway Labor Act with the understanding that the arbitration award which may be rendered will be final and binding upon the parties and further that the issue thus disposed of will not be reopened during the term of this agreement.

(i) This Article VIII does not prevent the progressing of pending notices, the serving of notices, and the negotiation of agreements on other matters not prohibited by the foregoing provisions of this Article VIII.

(j) Notwithstanding the provisions of Article XI of this Agreement, this Article VIII shall terminate effective November 1, 1959.

[fol. 216] EXHIBIT 18 TO EXHIBIT A

Article V

Mediation Agreement Case No. A-5294
June 12, 1957
(The Order of Railway Conductors and Brakemen)

ARTICLE V—DURATION OF AGREEMENT

The purpose of this Agreement is to fix the general level of compensation during the period of this Agreement. Therefore, subject to the provisions of paragraphs (d), (e), (f) and (g) of this Article, and the exceptions contained in Article VIII, no carrier or organization, party to this Agreement, will serve any notice or progress any pending notice to—

(a) Increase or decrease rates of pay established by Articles I, II, III and IV of this Agreement.

(b) Increase or decrease the rate of compensation provided in existing agreements or understandings, or eliminate or establish agreements providing the rate of compensation, covering overtime payments, arbi-

trary payments, Sunday or holiday payments, constructive allowance payments; negotiate agreements providing for paid holidays, or agreements which would have the effect of increasing or decreasing the number of paid vacation days or holidays, or of increasing or decreasing the number of employees required to be used under existing agreements, or of increasing or decreasing the car basis of pay.

(c) Establish a hospital, medical or surgical plan for employees and their dependents.

(d) This Article V will not debar management and committees on individual railroads from agreeing upon any subject of mutual interest.

(e) This Article V does not prevent the initiation of new notices or the progression of pending notices of desire to negotiate a different basic rate of pay on behalf of conductors or brakemen who are assigned to road switchers and are paid on the hourly basis, provided that the term "road switcher" is limited to switchers that perform the greater part of their tour of duty in the performance of switching service and that consideration of "road switchers" is limited to service which is comparable to yard service. This Article V does not prevent the serving of counterproposals by the carriers directly relating to such notices.

NOTE: The term "road switcher" as used in this paragraph (e) does not include pusher, helper, mine run, belt line, transfer, work, wreck, construction, local or mixed service. If the designation by name of a run is not descriptive as to the service engaged in, it is intended that such a run will fall within its proper classification in relation to the term "road switcher" as referred to in this paragraph (e).

"(Pages 3-5)"

[fol. 217] The initiation or progression of such notices as may be referred to herein will be confined to handling on individual properties with the understand-

ing that if the issue is not disposed of in direct negotiations and further progression is desired, it will be submitted to arbitration under the Railway Labor Act; it being understood that the arbitration award which may be rendered will be final and binding upon the parties and further that the issue thus disposed of may not again be reopened during the term of this Agreement.

(f) This Article V does not prevent the serving of new notices or the progression of pending notices of the desire of the organization to adjust monthly guarantee provisions of existing rules applicable to employees engaged in short turnaround passenger service nor the serving of counterproposals by the carriers directly relating to such notices, it being understood that money guarantees are not to be changed other than the effect of the increases provided for in Articles I, II, III and IV of this Agreement. If the issue is not disposed of in direct negotiation and it is desired to progress the matter further, it will be submitted to arbitration under the Railway Labor Act with the understanding that the arbitration award which may be rendered will be final and binding upon the parties and further that the issue thus disposed of will not be reopened during the term of this Agreement.

(g) This Article V does not prevent the progression of pending notices, the serving of notices, and the negotiation of agreements on other matters not prohibited by the foregoing provisions of this Article V.

(h) Notwithstanding the provisions of Article VIII of this Agreement, this Article V shall terminate effective November 1, 1959.

[fol. 218] EXHIBIT 19 TO EXHIBIT A

Article VIII

Mediation Agreement Case No. A-5464
July 18, 1957
(The Brotherhood of Locomotive Engineers)

ARTICLE VIII—DURATION OF AGREEMENT

The purpose of this Agreement is to fix the general level of compensation during the period of this Agreement. Therefore, subject to the provisions of paragraphs (d), (e) and (f) of this Article, and the exception contained in Article XI, no carrier or organization, party to this Agreement, will serve any notice or progress any pending notice to—

(a) Increase or decrease rates of pay established by Articles I, II, III, IV and V of this Agreement.

(b) Increase or decrease the rate of compensation provided in existing agreements or understandings, or eliminate or establish agreements providing the rate of compensation, covering overtime payments, arbitrary payments, Sunday or holiday payments, constructive allowance payments; negotiate other agreements providing for paid holidays, or which would have the effect of increasing or decreasing the number of paid vacation days or holidays, or of increasing or decreasing the number of employees required to be used under existing agreements.

(c) Establish a hospital, medical or surgical plan for employees and their dependents.

(d) This Article VIII will not debar management and committees on individual railroads from agreeing upon any subject of mutual interest.

(e) This Article VIII does not prevent the progression of pending notices served prior to November 1, 1956, of desire to negotiate an agreement on behalf of

engineers for the allowance of additional compensation for the use of radio equipment.

The progression of such notices referred to herein will be confined to handling on individual properties with the understanding that if the issue is not disposed of in direct negotiations and further progression is desired, it may only be submitted to arbitration under the Railway Labor Act; it being understood that the arbitration award which may be rendered will be final and binding upon the parties and further that the issue thus disposed of may not again be reopened during the term of this Agreement.

(f) This Article VIII does not prevent the progression of pending notices, the serving of notices, and the negotiation of agreements on other matters not prohibited by the foregoing provisions of this Article VIII.

(g) Notwithstanding the provisions of Article XI of this Agreement, this Article VIII shall terminate effective November 1, 1959.

"(Page 20)"

[fol. 219] EXHIBIT B TO AMENDMENT AND SUPPLEMENT TO COMPLAINT

NATIONAL COMMITTEE

CREATED BY ARTICLE 4 OF

NATIONAL AGREEMENT DATED MAY 23, 1952

BETWEEN RAILROADS REPRESENTED BY THE EASTERN, WESTERN AND SOUTHEASTERN CARRIERS' CONFERENCE COMMITTEES AND ENGINEERS, FIREMEN, HOSTLERS AND HOSTLER HELPERS OF SUCH CARRIERS REPRESENTED BY THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS

Case .....

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY and
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

VS.

THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS

Subject to the jurisdictional question hereinafter stated, Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas respectfully refer the following dispute to the National Committee created by Article 4 of the National Agreement dated May 23, 1952, between railroads represented by the Eastern, Western and Southeastern Carriers' Conference Committees and engineers, firemen, hostlers and hostler helpers of such carriers represented by The Brotherhood of Locomotive Engineers.

PARTIES

The parties to the dispute are Missouri-Kansas-Texas Railroad Company, Missouri-Kansas-Texas Railroad Company of Texas, and The Brotherhood of Locomotive Engineers.

[fol. 220] QUESTION AT ISSUE

The Brotherhood of Locomotive Engineers claims that Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas violated the provisions of Article 4 of said National Agreement of May 23, 1952, when they, by their General Order No. 119 dated October 2, 1958, and effective at 12.01 A.M. on October 19, 1958, rearranged assigned way freight service between North Yard (Wichita Falls, Texas) and Forgan, Oklahoma, as follows:

(a) Cancelled existing way freight assignments;

(b) Assigned two way freight crews to operate between North Yard (Wichita Falls, Texas) and Elk City, Oklahoma, a distance of 134.2 miles, daily except Sunday, with North Yard the home terminal of both crews, and with Sunday layover at North Yard for one crew and at Elk City for the other;

(c) Assigned one way freight crew to operate from Elk City, Oklahoma to Forgan, Oklahoma, a distance of 168 miles, on Mondays, Wednesdays and Fridays, and from Forgan to Elk City on Tuesdays, Thursdays and Saturdays, with Elk City the home terminal and with Sunday layover at Elk City;

and when they, by their General Order No. 120 dated October 2, 1958, and effective at 12.01 A. M. on October 19, 1958, abolished Altus, Oklahoma and Woodward, Oklahoma, as away-from-home terminals for unassigned crews in through freight service and in lieu thereof established Elk City, Oklahoma, and Forgan, Oklahoma, as away-from-home terminals for such crews, leaving Wichita Falls as the home terminal for such crews. Said Railroad Companies deny any violation.

[fol. 221] EX PARTE STATEMENT OF FACTS

Omitted. Printed side folio 169, page 119, supra.

This is the same as the Statement of Facts in Exhibit A except, in Exhibit B, the Respondents are called "Railroad

Companies" and reference is made only to Respondents' engineers.

[fol. 224] POSITION OF CARRIERS

Said Railroad Companies deny that they, or either of them, have violated any provision of Article 4 of said National Agreement of May 23, 1952. Their position will be developed under the following headings:

I

There is no provision in any agreement between said Railroad Companies and The Brotherhood of Locomotive Engineers which prohibited said Railroad Companies from taking the action of which said Brotherhood complains. Absent such prohibition, the carriers had the right to make such changes.

II

Express provisions of the agreement effective October 1, 1918, as amended October 1, 1948, between said Railroad Companies and The Brotherhood of Locomotive Engineers authorize the action of said Railroad Companies of which said Brotherhood complains.

III

Said Railroad Companies have not violated the provisions of Article 4 of said National Agreement of May 23, 1952.

Quotations from agreements will be made a part of the position of said Railroad Companies.

[fol. 225] I

There is no provision in any agreement between said Railroad Companies and The Brotherhood of Locomotive Engineers which prohibited said Railroad Companies from taking the action of which said Brotherhood complains. Absent such prohibition, the carriers had the right to make such changes.

The agreements between said Railroad Companies and The Brotherhood of Locomotive Engineers may be searched in vain for any provision which prohibited said Railroad Companies from making the changes of which said Brotherhood complains. In the absence of such prohibition, said Railroad Companies had the right to make such changes. This has been made abundantly clear by many awards of the First Division. We quote from a few of them, viz:

"Quotations from the awards. Same as in Exhibit A. Omitted. Printed side folio 174, page 124, supra."

[fol. 226] II

Express provisions of the agreement effective October 1, 1918, as amended October 1, 1948, between said Railroad Companies and The Brotherhood of Locomotive Engineers authorize the action of said Railroad Companies of which said Brotherhood complains.

As held by the National Railroad Adjustment Board, First Division, with Referee Alfred A. Colby, a carrier "is not obliged to point to any rule" which authorizes its action but, conversely, the burden is on a claimant union to show that a carrier "has surrendered or limited its basic management functions by the use of language in some rule that is susceptible of no other interpretation." (Docket [fol. 227] 24234; Award 15119, page 5, Bound Volume 104, page 317). However, without waiving their right to stand on this rule, said Railroad Companies direct the Committee's attention to the following provisions of the agreement effective October 1, 1918 as amended October 1, 1948 between said Railroad Companies and The Brotherhood of

Locomotive Engineers, which support the actions of the Railroad Companies, viz:

"The quotations of agreement provisions. Same as in Exhibit A. Omitted. Printed side folio 180, page 130, supra."

[fol. 228] These agreement rules authorize the abolishment or rearrangement of runs when, in the judgment of management, this is made necessary or desirable for business reasons, or because of changed conditions, and such rules and rulings authorize changes in terminals deemed necessary or desirable by management as a result of the abolishment or rearrangement of such runs.

[fol. 229] III

Said Railroad Companies have not violated the provisions of Article 4 of said National Agreement of May 23, 1952.

Said Railroad Companies have not violated the provisions of Article 4 of said National Agreement of May 23, 1952, with the Brotherhood of Locomotive Engineers for each and all of the following reasons:

"The reasons omitted. Printed side folio 189a, page 141, supra.

These are the same as in Exhibit A, except in Exhibit B, the Respondents are called 'Railroad Companies.'"

[fol. 231] Decisions of the "National Committee" (commonly called "Disputes Committee") created by Article 6 of the National Agreement dated May 23, 1952, with The Order of Railway Conductors, by Article 4 of the National Agreements dated May 23, 1952, with The Brotherhood of Locomotive Engineers and The Brotherhood of Locomotive Firemen and Enginemen support the petitioning carriers' position. Among others are the following:

"These exhibits same as in Exhibit A, except in Exhibit B they are numbered 3, 4, 5 and 6. Omitted. Printed side folio 191, page 142, supra."

[fol. 232] JURISDICTIONAL QUESTION

As stated on page 1 hereof, said Railroad Companies refer this dispute to the National Committee subject to the following jurisdictional question:

Article 4 of said National Agreement of May 23, 1952, with the Brotherhood of Locomotive Engineers, does not apply to the runs and terminals in question for each and all of the reasons stated in paragraphs (a) to (f), inclusive, on preceding pages 11 and 12. The Railroad Companies therefore respectfully submit that the National Committee has no jurisdiction of the subject matter of this dispute.

Article 4 of said National Agreement of May 23, 1952, provides that "the proposal" of a carrier, which presupposes a proposal within the purview of Article 4, will be considered by the National Committee. In this case, there was no proposal and none was required because Article 4 did not apply to the runs and terminals in question. There being no "proposal", we respectfully submit that the National Committee does not have jurisdiction of this dispute.

[fol. 233] The basic question is whether Article 4 of said National Agreement applies to the subject matter of this dispute and the power to answer that question has not been vested in the National Committee.

The Railroad Companies therefore request the Committee to dismiss this submission for want of jurisdiction or, in the alternative and in the event that the Committee should determine that it has jurisdiction, that the Committee find and hold the said Railroad Companies have not violated any of the provisions of Article 4 of said National Agreement of May 23, 1952.

Dated December 10, 1958.

Respectfully submitted,

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY,
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS,

By /s/ A. F. WINKEL
Assistant General Manager

[fol. 234] EXHIBITS 1 AND 2

Omitted. Printed side folios 91 and 92, pages 80 and 81, supra. Same as Exhibits 2 and 3 to Affidavit.

[fol. 236] EXHIBIT 3

Omitted. Printed side folio 208, page 153, supra. Same as Exhibit 12 to Exhibit A.

[fol. 237] EXHIBIT 4

Omitted. Printed side folio 209, page 155, supra. Same as Exhibit 13 to Exhibit A.

[fol. 239] EXHIBIT 5

Omitted. Printed side folio 211, page 157, supra. Same as Exhibit 14 to Exhibit A.

[fol. 240] EXHIBIT 6

Omitted. Printed side folio 212, page 159, supra. Same as Exhibit 15 to Exhibit A.

[fol. 241] EXHIBIT C TO AMENDMENT AND SUPPLEMENT TO COMPLAINT

NATIONAL COMMITTEE

CREATED BY ARTICLE 4 OF

NATIONAL AGREEMENT DATED MAY 23, 1952

BETWEEN RAILROADS REPRESENTED BY THE EASTERN, WESTERN AND SOUTHEASTERN CARRIERS' CONFERENCE COMMITTEES AND FIREMEN, ENGINEERS, HOSTLERS AND HOSTLER HELPERS OF SUCH CARRIERS REPRESENTED BY THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN

Case .....

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY and
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

vs.

THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN

Subject to the jurisdictional question hereinafter stated, Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas respectfully refer the following dispute to the National Committee created by Article 4 of the National Agreement dated May 23, 1952, between railroads represented by the Eastern, Western and Southeastern Carriers' Conference Committees and firemen, engineers, hostlers and hostler helpers of such carriers represented by The Brotherhood of Locomotive Firemen and Enginemen.

PARTIES

The parties to the dispute are Missouri-Kansas-Texas Railroad Company, Missouri-Kansas-Texas Railroad Company of Texas, and The Brotherhood of Locomotive Firemen and Enginemen.

[fol. 247] I

There is no provision in any agreement between said Railroad Companies and The Brotherhood of Locomotive Firemen and Enginemen which prohibited said Railroad Companies from taking the action of which said Brotherhood complains. Absent such prohibition, the carriers had the right to make such changes.

The agreements between said Railroad Companies and The Brotherhood of Locomotive Firemen and Enginemen may be searched in vain for any provision which prohibited said Railroad Companies from making the changes of which said Brotherhood complains. In the absence of such prohibition, said Railroad Companies had the right to make such changes. This has been made abundantly clear by many awards of the First Division. We quote from a few of them, viz:

"Quotations from awards. Same as in Exhibit A. Omitted. Printed side folio 174, page 124, supra.

[fol. 248] II

Express provisions of the agreement effective October 1, 1918, with revisions to November 1, 1957, between said Railroad Companies and The Brotherhood of Locomotive Firemen and Enginemen authorize the action of said Railroad Companies of which said Brotherhood complains.

As held by the National Railroad Adjustment Board, First Division, with Referee Alfred A. Colby, a carrier "is not obliged to point to any rule" which authorizes its action but, conversely, the burden is on a claimant union to show that a carrier "has surrendered or limited its basic management functions by the use of language in some rule that is susceptible of no other interpretation." (Docket 24234; [fol. 249] Award 15119, page 5; Bound Volume 104, page 317). However, without waiving their right to stand on this rule, said Railroad Companies direct the Committee's attention to the following provisions of the agreement effec-

tive October 1, 1918, with revisions to November 1, 1957, between said Railroad Companies and The Brotherhood of Locomotive Firemen and Enginemen, which support the actions of said Railroad Companies, viz:

"The quotations of agreement provisions. Same as in Exhibit A. Omitted. Printed side folio 180, page 130, supra."

[fol. 250] These agreement rules authorize the abolishment or rearrangement of runs when, in the judgment of management, this is made necessary or desirable for business reasons, or because of changed conditions, and such rules and rulings authorize changes in terminals deemed necessary or desirable by management as a result of the abolishment or rearrangement of such runs.

III

Said Railroad Companies have not violated the provisions of Article 4 of said National Agreement of May 23, 1952.

Said Railroad Companies have not violated the provisions of Article 4 of said National Agreement of May 23, [fol. 251] 1952 with said Brotherhood of Locomotive Firemen and Enginemen for each and all of the following reasons:

"The reasons omitted. Printed side folio 189a, page 141, supra. These are the same as Exhibit A, except in Exhibit C, the Respondents are called 'Railroad Companies.'"

[fol. 253] Decisions of the "National Committee" (commonly called "Disputes Committee") created by Article 6 of the National Agreement dated May 23, 1952, with The Order of Railway Conductors, by Article 4 of the National Agreements dated May 23, 1952, with the Brotherhood of Locomotive Engineers and The Brotherhood of Locomotive Firemen and Enginemen support the petitioning carriers' position. Among others are the following:

"These exhibits same as in Exhibit A, except in Exhibit C they are numbered 3, 4, 5 and 6. Omitted. Printed side folio 191, page 142, supra."

[fol. 242] QUESTION AT ISSUE

The Brotherhood of Locomotive Firemen and Enginemen claims that Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas violated the provisions of Article 4 of said National Agreement of May 23, 1952 when they, by their General Order No. 119 dated October 2, 1958, and effective at 12.01 A.M. on October 19, 1958, rearranged assigned way freight service between North Yard (Wichita Falls, Texas) and Forgan, Oklahoma, as follows:

(a) Cancelled existing way freight assignments;

(b) Assigned two wayfreight crews to operate between North Yard (Wichita Falls, Texas) and Elk City, Oklahoma, a distance of 134.2 miles, daily except Sunday, with North Yard the home terminal of both crews, and with Sunday layover at North Yard for one crew and at Elk City for the other;

(c) Assigned one wayfreight crew to operate from Elk City, Oklahoma to Forgan, Oklahoma, a distance of 168 miles, on Mondays, Wednesdays and Fridays, and from Forgan to Elk City on Tuesdays, Thursdays and Saturdays, with Elk City the home terminal and with Sunday layover at Elk City;

and when they, by their General Order No. 120 dated October 2, 1958, and effective at 12.01 A. M. on October 19, 1958, abolished Altus, Oklahoma and Woodward, Oklahoma, as away-from-home terminals for unassigned crews in through freight service and in lieu thereof established Elk City, Oklahoma, and Forgan, Oklahoma, as away-from-home terminals for such crews, leaving Wichita Falls as the home terminal for such crews. Said Railroad Companies deny any violation.

[fol. 243] EX PARTE STATEMENT OF FACTS

Omitted. Printed side folio 169, page 119, supra.

This is the same as the Statement of Facts in Exhibit A except, in Exhibit C, the Respondents are called "Railroad

Companies" and reference is made only to Respondents' firemen.

[fol. 246] POSITION OF CARRIERS

Said Railroad Companies deny that they, or either of them, have violated any provision of Article 4 of said National Agreement of May 23, 1952. Their position will be developed under the following headings:

I

There is no provision in any agreement between said Railroad Companies and The Brotherhood of Locomotive Firemen and Enginemen which prohibited said Railroad Companies from taking the action of which said Brotherhood complains. Absent such prohibition, the carriers had the right to make such changes.

II

Express provisions of the agreement effective October 1, 1918, with revisions to November 1, 1957, between said Railroad Companies and The Brotherhood of Locomotive Firemen and Enginemen authorize the action of said Railroad Companies of which said Brotherhood complains.

III

Said Railroad Companies have not violated the provisions of Article 4 of said National Agreement of May 23, 1952.

Quotations from agreement will be made a part of the position of said Railroad Companies.

[fol. 263] EXHIBIT D TO AMENDMENT AND SUPPLEMENT TO COMPLAINT

NATIONAL COMMITTEE

CREATED BY ARTICLE 6 OF

NATIONAL AGREEMENT DATED MAY 23, 1952

BETWEEN RAILROADS REPRESENTED BY THE EASTERN, WESTERN AND SOUTHEASTERN CARRIERS' CONFERENCE COMMITTEES AND CONDUCTORS, TRAINMEN AND YARDMEN OF SUCH CARRIERS REPRESENTED BY THE ORDER OF RAILWAY CONDUCTORS (NOW THE ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN)

Case .....

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY and
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

vs.

THE ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN

Subject to the jurisdictional question hereinafter stated, Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas respectfully refer the following dispute to the National Committee created by Article 6 of National Agreement dated May 23, 1952, between railroads represented by the Eastern, Western and Southeastern Carriers' Conference Committees and conductors, trainmen and yardmen of such carriers represented by The Order of Railway Conductors (now The Order of Railway Conductors and Brakemen).

PARTIES

The parties to the dispute are Missouri-Kansas-Texas Railroad Company, Missouri-Kansas-Texas Railroad Company of Texas, and The Order of Railway Conductors and Brakemen.

[fol. 264] QUESTION AT ISSUE

The Order of Railway Conductors and Brakemen claims that Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas violated the provisions of Article 6 of said National Agreement of May 23, 1952 when they, by their General Order No. 119 dated October 2, 1958, and effective at 12.01 A. M. on October 19, 1958, rearranged assigned way freight service between North Yard (Wichita Falls, Texas) and Forgan, Oklahoma, as follows:

(a) Cancelled existing way freight assignments;

(b) Assigned two wayfreight crews to operate between North Yard (Wichita Falls, Texas) and Elk City, Oklahoma, a distance of 134.2 miles, daily except Sunday, with North Yard the home terminal of both crews, and with Sunday layover at North Yard for one crew and at Elk City for the other;

(c) Assigned one wayfreight crew to operate from Elk City, Oklahoma to Forgan, Oklahoma, a distance of 168 miles, on Mondays, Wednesdays and Fridays, and from Forgan to Elk City on Tuesdays, Thursdays and Saturdays, with Elk City the home terminal and with Sunday layover at Elk City;

and when they, by their General Order No. 120 dated October 2, 1958, and effective at 12.01 A. M. on October 19, 1958, abolished Altus, Oklahoma and Woodward, Oklahoma, as away-from-home terminals for unassigned crews in through freight service and in lieu thereof established Elk City, Oklahoma, and Forgan, Oklahoma, as away-from-home terminals for such crews, leaving Wichita Falls as the home terminal for such crews. Said Railroad Companies deny that the provisions of Article 6 of said National Agreement of May 23, 1952, now constitute an agreement between said Railroad Companies and The Order of Railway Conductors and Brakemen, and in the alternative, said Railroad Companies deny that they, or either of them, have violated any of the provisions of Article 6 of said National Agreement.

[fol. 254] JURISDICTIONAL QUESTION

As stated on page 1 hereof, said Railroad Companies refer this dispute to the National Committee subject to the following jurisdictional question:

Article 4 of said National Agreement of May 23, 1952 with the Brotherhood of Locomotive Firemen and Enginemen, does not apply to the runs and terminals in question for each and all of the reasons stated in paragraphs (a) to (f) inclusive on preceding pages 11 and 12. The Railroad Companies therefore respectfully submit that the National Committee has no jurisdiction of the subject matter of this dispute.

Article 4 of said National Agreement of May 23, 1952 provides that "the proposal" of a carrier, which presupposes a proposal within the purview of Article 4, will be considered by the National Committee. In this case, there was no proposal and none was required because Article 4 did not apply to the runs and terminals in question. There being no "proposal" we respectfully submit the National Committee does not have jurisdiction of this dispute.
[fol. 255] The basic question is whether Article 4 of said National Agreement of May 23, 1952 applies to the subject matter of this dispute and the power to answer that question has been vested in the National Committee.

The Railroad Companies therefore request the Committee to dismiss this submission for want of jurisdiction or, in the alternative and in the event that the Committee should determine that it has jurisdiction, that the Committee find and hold that said Railroad Companies have not violated any of the provisions of Article 4 of said National Agreement of May 23, 1952.

Dated December 10, 1958.

Respectfully submitted,

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY,
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS,

By /s/ A. F. WINKEL
Assistant General Manager

[fol. 256] EXHIBITS 1 AND 2

Omitted. Printed side folios 91 and 92, pages 80 and 81, supra. Same as Exhibits 2 and 3 to Affidavit.

[fol. 258] EXHIBIT 3

Omitted. Printed side folio 208, page 153, supra. Same as Exhibit 12 to Exhibit A.

[fol. 259] EXHIBIT 4

Omitted. Printed side folio 209, page 155, supra. Same as Exhibit 13 to Exhibit A.

[fol. 261] EXHIBIT 5

Omitted. Printed side folio 211, page 157, supra. Same as Exhibit 14 to Exhibit A.

[fol. 262] EXHIBIT 6

Omitted. Printed side folio 212, page 159, supra. Same as Exhibit 15 to Exhibit A.

[fol. 265] EX PARTE STATEMENT OF FACTS

Omitted. Printed side folio 169, page 119, supra.

This is the same as the Statement of Facts in Exhibit A except, in Exhibit D, the Respondents are called "Railroad Companies" and reference is made only to Respondents' conductors.

[fol. 268] POSITION OF CARRIERS

Said Railroad Companies deny that the provisions of Article 6 of said National Agreement of May 23, 1952 now constitute an agreement between said Railroad Companies and The Order of Railway Conductors and Brakemen and said Railroad Companies deny that they, or either of them, have violated any provision of Article 6 of said National Agreement.

I

There is no provision in any agreement between said Railroad Companies and The Order of Railway Conductors and Brakemen which prohibited said Railroad Companies from taking the action of which said Order complains. Absent such prohibition, the carriers had the right to make such changes.

II

Express provisions of the agreement effective November 1, 1929 with revisions to April 1, 1954, between said Railroad Companies and The Order of Railway Conductors and Brakemen authorize the action of said Railroad Companies of which said Order complains.

III

The provisions of Article 6 of the National Agreement dated May 23, 1952, between The Order of Railway Conductors (now The Order of Railway Conductors and Brakemen), which became an agreement between

said Order and Railroad Companies on August 1, 1952, were cancelled in the year 1954 and said provisions then ceased to constitute an agreement between said Order and the Railroad Companies.

IV

The Railroad Companies have not violated the provisions of Article 6 of the National Agreement dated May 23, 1952, between The Order of Railway Conductors (now The Order of Railway Conductors and [fol. 269] Brakemen) and representatives of numerous railroad companies, including the Railroad Companies, which became an agreement between said Order and Railroad Companies on August 1, 1952, and which were cancelled in the year 1954.

Quotations from agreements will be made a part of the position of said Railroad Companies.

I

There is no provision in any agreement between said Railroad Companies and The Order of Railway Conductors and Brakemen which prohibited said Railroad Companies from taking the action of which said Order complains. Absent such prohibition, the carriers had the right to make such changes.

The agreements between said Railroad Companies and The Order of Railway Conductors and Brakemen may be searched in vain for any provision which prohibited said Railroad Companies from making the changes of which said Order complains. In the absence of such prohibition, said Railroad Companies had the right to make such changes. This has been made abundantly clear by many awards of the First Division. We quote from a few of them, viz:

"Quotations from the awards. Same as in Exhibit A. Omitted. Printed side folio 174, page 124, supra."

[fol. 270] II

Express provisions of the agreement effective November 1, 1929 with revisions to April 1, 1954, between said Railroad Companies and The Order of Railway Conductors and Brakemen authorize the action of said Railroad Companies of which said Order complains.

As held by the National Railroad Adjustment Board, First Division, with Referee Alfred A. Colby, a carrier "is not obliged to point to any rule" which authorizes its action but, conversely, the burden is on a claimant union to show that a carrier "has surrendered or limited its basic management functions by the use of language in some rule that is susceptible of no other interpretation." (Docket 24234; [fol. 271] Award 15119, page 5, Bound Volume 104, page 317). However, without waiving their right to stand on this rule, said Railroad Companies direct the Committee's attention to the following provisions of the agreement effective November 1, 1929, with revisions to April 1, 1954, between said Railroad Companies and The Order of Railway Conductors and Brakemen, which support the actions of said Railroad Companies, viz:

"The quotations of agreement provisions. Same as in Exhibit A. Omitted. Printed side folio 180, page 130, supra."

[fol. 272] These agreement rules authorize the abolishment or rearrangement of runs when, in the judgment of management, this is made necessary or desirable for business reasons, or because of changed conditions, and such rules and rulings authorize changes in terminals deemed necessary or desirable by management as a result of the abolishment or rearrangement of such runs.

III

The provisions of Article 6 of the National Agreement dated May 23, 1952, between The Order of Railway Conductors (now The Order of Railway Conductors and Brakemen), which became an agreement between said Order and the Railroad Companies on August 1, 1952, were cancelled in the year 1954 and said provisions then ceased to constitute an agreement between said Order and the Railroad Companies.

The Order of Railway Conductors and Brakemen contends that the Railroad Companies have violated Article 6 of a National Agreement dated May 23, 1952, between The Order of Railway Conductors, now The Order of Railway [fol. 273] Conductors and Brakemen, and representatives of numerous railroad companies, including the petitioning carriers, which became an agreement between said Order and the Railroad Companies on August 1, 1952. The violation is alleged to have occurred at 12.01 A. M., on October 19, 1958, when there became effective General Orders Nos. 119 and 120, issued by the petitioning carriers on October 2, 1958, ordering the changes of which the respondent unions complain. No such violation could, or did, occur in 1958 because said agreement of August 1, 1952, was cancelled in the year 1954 when said Order and the petitioning carriers agreed upon a reprint of their agreements and agreed (1) not to reproduce the provisions of Article 6 of said National Agreement dated May 23, 1952, (2) that said provisions were rejected, and (3) that existing rules or practices were preserved. This is clearly shown by correspondence between the parties and by the 1954 revision of the appendix to the agreement between the Railroad Companies, The Brotherhood of Railroad Trainmen, and The Order of Railway Conductors, now The Order of Railway Conductors and Brakemen, viz:

"The letter references and appendix revision omitted. same as in Exhibit A. Printed side folio 187, page 138, supra."

[fol. 275] It is clear from the foregoing that Article 6 of said National Agreement dated May 23, 1952, ceased to be an agreement between the Railroad Companies and The

Order of Railway Conductors on April 1, 1954, and therefore could not have been violated by the Railroad Companies on October 19, 1958, as claimed by The Order of Railway Conductors and Brakemen.

IV

The Railroad Companies have not violated the provisions of Article 6 of the National Agreement dated May 23, 1952, between The Order of Railway Conductors (now the Order of Railway Conductors and Brakemen) and representatives of numerous railroad companies, including the Railroad Companies, which became an agreement between said Order and Railroad Companies on August 1, 1952, and which were cancelled in the year 1954.

The Railroad Companies have not violated the provisions of Article 6 of the National Agreement dated May 23, 1952, between The Order of Railway Conductors (now The Order of Railway Conductors and Brakemen) and representatives of numerous railroad companies, which became an agreement on August 1, 1952, between said Order and Railroad Companies because, as shown in the preceding section of this submission, said agreement was cancelled in the year 1954 while the alleged violation occurred on October 19, 1958. In the alternative, the Railroad Companies allege that if said agreement was in effect on October 19, 1958, and is now in effect, which the Railroad Companies deny, then and in that event, the Railroad Companies did not violate said agreement for each and all of the following reasons:

[fol. 276] "The reasons omitted. Printed side folio 189a, page 141, supra. These are the same as in Exhibit A."

[fol. 278] Decisions of the "National Committee" (commonly called "Disputes Committee") created by Article 6 of the National Agreement dated May 23, 1952, with The Order of Railway Conductors, by Article 4 of the National Agreements dated May 23, 1952, with The Brotherhood of Locomotive Engineers and The Brotherhood of Locomotive

Firemen and Enginemen support the petitioning carriers' position. Among others are the following:

"These exhibits same as in Exhibit A, except in Exhibit D they are numbered 9, 10, 11 and 12. Omitted. Printed side folio 191, page 142, supra."

[fol. 279] JURISDICTIONAL QUESTION

As stated on page 1 hereof, said Railroad Companies refer this dispute to the National Committee subject to the following jurisdictional question:

As shown in Section III of this submission, the provisions of Article 6 of said National Agreement dated May 23, 1952, with The Order of Railway Conductors, now The Order of Railway Conductors and Brakemen, which became an agreement on August 1, 1952, between said Order and said Railroad Companies, were cancelled in the year 1954 and no longer constitute an agreement between said Order and said Railroad Companies. For this reason we respectfully submit that the Committee is without jurisdiction of this dispute.

Article 6 of said National Agreement of May 23, 1952, with The Order of Railway Conductors and Brakemen, does not apply to the runs and terminals in question for each and all of the reasons stated in paragraphs (a) to (f) inclusive, in Section IV of this submission (Pages 14 and 15). The Railroad Companies therefore respectfully submit that the National Committee has no jurisdiction of the subject matter of this dispute.

[fol. 280] Article 6 of said National Agreement of May 23, 1952 provides that "the proposal" of a Carrier, which presupposes a proposal within the purview of Article 6, will be considered by the National Committee. In this case, there was no proposal and none was required because Article 6 did not apply to the runs and terminals in question. There being no "proposal", we respectfully submit that the National Committee does not have jurisdiction of this dispute.

If the provisions of Article 6 of said National Agreement dated May 23, 1952, now constitute an agreement between said Railroad Companies and The Order of Railway Conductors and Brakemen, which said Railroad Companies deny for the reasons stated in Section III of this submission, then and in that event, the basic question is whether Article 6 applies to the subject matter of this dispute and the power to answer that question has been vested in the National Committee.

The Railroad Companies therefore request the Committee to dismiss this submission for want of jurisdiction or, in the alternative and in the event that the Committee should determine that it has jurisdiction, that the Committee find and hold that said Railroad Companies have not violated any of the provisions of Article 6 of said National Agreement of May 23, 1952.

Dated December 10, 1958.

Respectfully submitted,

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY,
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS,

By /s/ A. F. WINKEL
Assistant General Manager

[fol. 281] EXHIBITS 1 AND 2

Omitted. Printed side folios 91 and 92, pages 80 and 81, supra. Same as Exhibits 2 and 3 to Affidavit.

[fol. 283] EXHIBIT 3

Omitted. Printed side folio 93, page 82, supra. Same as Exhibit 4 to Affidavit.

[fol. 284] EXHIBIT 4

Omitted. Printed side folio 94, page 83, supra. Same as Exhibit 5 to Affidavit.

[fol. 285] EXHIBIT 5

Omitted. Printed side folio 95, page 84, supra. Same as Exhibit 6 to Affidavit.

[fol. 286] EXHIBIT 6

Omitted. Printed side folio 96, page 85, supra. Same as Exhibit 7 to Affidavit.

[fol. 287] EXHIBIT 7

Omitted. Printed side folio 97, page 86, supra. Same as Exhibit 8 to Affidavit.

[fol. 288] EXHIBIT 8

Omitted. Printed side folio 98, page 87, supra. Same as Exhibit 9 to Affidavit.

[fol. 291] EXHIBIT 9

Omitted. Printed side folio 208, page 153, supra. Same as Exhibit 12 to Exhibit A.

[fol. 292] EXHIBIT 10

Omitted. Printed side folio 209, page 155, supra. Same as Exhibit 13 to Exhibit A.

[fol. 294] EXHIBIT 11

Omitted. Printed side folio 211, page 157, supra. Same as Exhibit 14 to Exhibit A.

[fol. 295] EXHIBIT 12

Omitted. Printed side folio 212, page 159, supra. Same as Exhibit 15 to Exhibit A.

[fol. 296] EXHIBIT E TO AMENDMENT AND SUPPLEMENT TO COMPLAINT

DISPUTES COMMITTEE

CREATED BY ARTICLE X OF MEDIATION AGREEMENT CASE NO. A-5241

DATED NOVEMBER 20, 1956

BETWEEN RAILROADS REPRESENTED BY THE EASTERN, WESTERN AND SOUTHEASTERN CARRIERS' CONFERENCE COMMITTEES AND THE EMPLOYES OF SUCH CARRIERS REPRESENTED BY THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN

Case .....

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY and MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

VS.

THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN

Subject to the jurisdictional question hereinafter stated, Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas respectfully refer the following dispute to the Disputes Committee created by Article X of Mediation Agreement No. A-5241 dated

November 20, 1956, between railroads represented by the Eastern, Western and Southeastern Carriers' Conference Committees and the employes of such carriers represented by The Brotherhood of Locomotive Firemen and Enginemen.

PARTIES

The parties to the dispute are Missouri-Kansas-Texas Railroad Company, Missouri-Kansas-Texas Railroad Company of Texas, and The Brotherhood of Locomotive Firemen and Enginemen.

[fol. 297] QUESTION AT ISSUE

The Brotherhood of Locomotive Firemen and Enginemen claims that Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas violated the provisions of Article VIII (b) of said Mediation Agreement No. A-5241 when they, by their General Order No. 119 dated October 2, 1958, and effective at 12.01 A.M. on October 19, 1958, rearranged assigned way freight service between North Yard (Wichita Falls, Texas) and Forgan, Oklahoma, as follows:

(a) Cancelled existing way freight assignments;

(b) Assigned two wayfreight crews to operate between North Yard (Wichita Falls, Texas) and Elk City, Oklahoma, a distance of 134.2 miles, daily except Sunday, with North Yard the home terminal of both crews, and with Sunday layover at North Yard for one crew and at Elk City for the other;

(c) Assigned one wayfreight crew to operate from Elk City, Oklahoma to Forgan, Oklahoma, a distance of 168 miles, on Mondays, Wednesdays and Fridays, and from Forgan to Elk City on Tuesdays, Thursdays and Saturdays, with Elk City the home terminal and with Sunday layover at Elk City;

and when they, by their General Order No. 120 dated October 2, 1958, and effective at 12.01 A. M. on October 19, 1958,

abolished Altus, Oklahoma and Woodward, Oklahoma, as away-from-home terminals for unassigned crews in through freight service and in lieu thereof established Elk City, Oklahoma, and Forgan, Oklahoma, as away-from-home terminals for such crews, leaving Wichita Falls as the home terminal for such crews. Said Railroad Companies deny any violation.

[fol. 298] Ex Parte Statement of Facts

Omitted. Printed side folio 169, page 119, supra.

This is the same as the Statement of Facts in Exhibit A except, in Exhibit E, the Respondents are called "Railroad Companies" and reference is made only to Respondents' firemen.

• • • • • • •

[fol. 301] Position of Carriers

Said Railroad Companies deny that they, or either of them, have violated any provision of Article VIII (b) of said Mediation Agreement No. A-5241. Their position will be developed under the following headings:

I

There is no provision in any agreement between said Railroad Companies and The Brotherhood of Locomotive Firemen and Enginemen which prohibited said Railroad Companies from taking the action of which said Brotherhood complains. Absent such prohibition, the carriers had the right to make such changes.

II

Express provisions of the agreement effective October 1, 1918, with revisions to November 1, 1957, between said Railroad Companies and The Brotherhood of Locomotive Firemen and Enginemen authorize the action of said Railroad Companies of which said Brotherhood complain.

III

Said Railroad Companies have not violated the provisions of Article VIII (b) of said Mediation Agreement No. A-5241.

Quotations from agreement will be made a part of the position of said Railroad Companies.

[fol. 302] I

There is no provision in any agreement between said Railroad Companies and The Brotherhood of Locomotive Firemen and Enginemen which prohibited said Railroad Companies from taking the action of which said Brotherhood complains. Absent such prohibition, the carriers had the right to make such changes.

The agreements between said Railroad Companies and The Brotherhood of Locomotive Firemen and Enginemen may be searched in vain for any provision which prohibited said Railroad Companies from making the changes of which said Brotherhood complains. In the absence of such prohibition, said Railroad Companies had the right to make such changes. This has been made abundantly clear by many awards of the First Division. We quote from a few of them, viz:

"Quotations from the awards. Same as in Exhibit A. Omitted. Printed side folio 174, page 124, supra."

[fol. 303] II

Express provisions of the agreement effective October 1, 1918, with revisions to November 1, 1957, between said Railroad Companies and The Brotherhood of Locomotive Firemen and Enginemen authorize the action of said Railroad Companies of which said Brotherhood complains.

As held by the National Railroad Adjustment Board, First Division, with Referee Alfred A. Colby, a carrier "is not obliged to point to any rule" which authorizes its action but, conversely, the burden is on a claimant union to show

that a carrier "has surrendered or limited its basic management functions by the use of language in some rule that is susceptible of no other interpretation." (Docket 24234; [fol. 304] Award 15119, page 5; Bound Volume 104, page 317). However, without waiving their right to stand on this rule, said Railroad Companies direct the Committee's attention to the following provisions of the agreement effective October 1, 1918, with revisions to November 1, 1957, between said Railroad Companies and The Brotherhood of Locomotive Firemen and Enginemen, which support the actions of said Railroad Companies, viz:

"The quotations of agreement provisions. Same as in Exhibit A omitted. Printed side folio 180, page 130, supra."

[fol. 305] These agreement rules authorize the abolishment or rearrangement of runs when, in the judgment of management, this is made necessary or desirable for business reasons, or because of changed conditions, and such rules and rulings authorize changes in terminals deemed necessary or desirable by management as a result of the abolishment or rearrangement of such runs.

III

Said Railroad Companies have not violated the provisions of Article VIII (b) of said Mediation Agreement No. A-5241.

Said Railroad Companies have not violated the provisions of Article VIII (b) of Mediation Agreement Case No. [fol. 306] A-5241 with The Brotherhood of Locomotive Firemen and Enginemen. Those provisions prohibit a carrier from serving any notice or progressing any pending notice (1) to decrease the rate of compensation provided in existing agreements or understandings, or (2) to eliminate agreements providing for any rate of compensation, or (3) to negotiate agreements which would have the effect of decreasing the number of employees required to be used under existing agreements. Said Railroad Companies have not done any of these things and therefore the provisions of said Article VIII (b) have not been violated.

JURISDICTIONAL QUESTION

As stated on page 1 hereof, said Railroad Companies refer this dispute to the Disputes Committee subject to the following jurisdictional question:

Article VIII of said Mediation Agreement No. A-5241, with exceptions not here relevant, only prohibits a carrier from serving any notice or progressing any pending notice (1) to decrease the rate of compensation provided in existing agreements or understandings, or (2) to eliminate agreements providing for any rate of compensation, or (3) to negotiate agreements which would have the effect of decreasing the number of employees required to be used under existing agreements. The petitioning carriers have not served any such notices and they are not attempting to progress any such notices; therefore, they respectfully [fol. 307] submit that the Disputes Committee has no jurisdiction of the subject matter of this dispute.

Article X (a) of said Mediation Agreement No. A-5241 provides that "any dispute involving the interpretation or application of any of the terms" of said Agreement shall be referred to the Disputes Committee created by that Article. We respectfully submit that this dispute does not involve the "terms" of said Agreement, that the basic question is whether said Agreement applies to the subject matter of this dispute, and that power to answer that question has not been vested in the Disputes Committee.

The Railroad Companies therefore request the Committee to dismiss this submission for want of jurisdiction or, in the alternative and in the event that the Committee should determine that it has jurisdiction, that the Committee find and hold that said Railroad Companies have not violated any of the provisions of Article VIII of said National Agreement of November 20, 1956.

Dated December 10, 1958.

Respectfully submitted,

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY,
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS,

By /s/ A. F. WINKEL

[fol. 308] EXHIBITS 1 AND 2

Omitted. Printed side folios 91 and 92, pages 80 and 81, supra. Same as Exhibits 2 and 3 to Affidavit.

[fol. 310] EXHIBIT F TO AMENDMENT AND SUPPLEMENT TO COMPLAINT

DISPUTES COMMITTEE

CREATED BY ARTICLE X OF

MEDIATION AGREEMENT CASE NO. A-5248

DATED APRIL 5, 1957

BETWEEN RAILROADS REPRESENTED BY THE EASTERN, WESTERN AND SOUTHEASTERN CARRIERS' CONFERENCE COMMITTEES AND THE EMPLOYES OF SUCH CARRIERS REPRESENTED BY THE BROTHERHOOD OF RAILROAD TRAINMEN

Case .....

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY and
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

VS.

THE BROTHERHOOD OF RAILROAD TRAINMEN

Subject to the jurisdictional question hereinafter stated, Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas respectfully refer the following dispute to the Disputes Committee created by Article X of Mediation Agreement No. A-5248 dated April 5, 1957, between railroads represented by the Eastern, Western and Southeastern Carriers' Conference Committees and employes of such carriers represented by The Brotherhood of Railroad Trainmen.

PARTIES

The parties to the dispute are Missouri-Kansas-Texas Railroad Company, Missouri-Kansas-Texas Railroad Company of Texas, and The Brotherhood of Railroad Trainmen.

[fol. 311] QUESTION AT ISSUE

The Brotherhood of Railroad Trainmen claims that Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas violated the provisions of Article VIII (b) of said Mediation Agreement No. A-5248 when they, by their General Order No. 119 dated October 2, 1958, and effective at 12.01 A. M. on October 19, 1958, rearranged assigned way freight service between North Yard (Wichita Falls, Texas) and Forgan, Oklahoma, as follows:

(a) Cancelled existing way freight assignments;

(b) Assigned two wayfreight crews to operate between North Yard (Wichita Falls, Texas) and Elk City, Oklahoma, a distance of 134.2 miles, daily except Sunday, with North Yard the home terminal of both crews, and with Sunday layover at North Yard for one crew and at Elk City for the other;

(c) Assigned one wayfreight crew to operate from Elk City, Oklahoma to Forgan, Oklahoma, a distance of 168 miles, on Mondays, Wednesdays and Fridays, and from Forgan to Elk City on Tuesdays, Thursdays and Saturdays, with Elk City the home terminal and with Sunday layover at Elk City;

and when they, by their General Order No. 120 dated October 2, 1958 and effective at 12.01 A. M. on October 19, 1958, abolished Altus, Oklahoma and Woodward, Oklahoma, as away-from-home terminals for unassigned crews in through freight service and in lieu thereof established Elk City, Oklahoma, and Forgan, Oklahoma, as away-from-home terminals for such crews, leaving Wichita Falls as the home terminal for such crews. Said Railroad Companies deny any violation.

[fol. 312] Ex Parte Statement of Facts

Omitted. Printed side folio 169, page 119, supra.

This is the same as the Statement of Facts in Exhibit A except, in Exhibit F, the Respondents are called "Railroad Companies" and reference is made only to Respondents' brakemen.

[fol. 315] Position of Carriers

Said Railroad Companies deny that they, or either of them, have violated any provision of Article VIII (b) of said Mediation Agreement No. A-5248. Their position will be developed under the following headings:

I

There is no provision in any agreement between said Railroad Companies and The Brotherhood of Railroad Trainmen which prohibited said Railroad Companies from taking the action of which said Brotherhood complains. Absent such prohibition, the carriers had the right to make such changes.

II

Express provisions of the agreement effective November 1, 1929 with revisions to April 1, 1954, between said Railroad Companies and The Brotherhood of Railroad Trainmen authorize the action of said Railroad Companies of which said Brotherhood complains.

III

Said Railroad Companies have not violated the provisions of Article VIII (b) of said Mediation Agreement No. A-5248.

Quotations from agreements will be made a part of the position of said Railroad Companies.

[fol. 316] I

There is no provision in any agreement between said Railroad Companies and The Brotherhood of Railroad Trainmen which prohibited said Railroad Companies from taking the action of which said Brotherhood complains. Absent such prohibition, the carriers had the right to make such changes.

The agreements between said Railroad Companies and The Brotherhood of Railroad Trainmen may be searched in vain for any provision which prohibited said Railroad Companies from making the changes of which said Brotherhood complains. In the absence of such prohibition, said Railroad Companies had the right to make such changes. This has been made abundantly clear by many awards of the First Division. We quote from a few of them, viz:

"Quotations from the awards. Omitted. Printed side folio 174, page 124, supra. Same as in Exhibit A."

[fol. 317] II

Express provisions of the agreement effective November 1, 1929 with revisions to April 1, 1954, between said Railroad Companies and The Brotherhood of Railroad Trainmen authorize the action of said Railroad Companies of which said Brotherhood complains.

As held by the National Railroad Adjustment Board, First Division, with Referee Alfred A. Colby, a carrier "is not obliged to point to any rule" which authorizes its action but, conversely, the burden is on a claimant union to show that a carrier "has surrendered or limited its basic management functions by the use of language in some rule that is susceptible of no other interpretation." (Docket 24234; [fol. 318] Award 15119, Page 5, Bound Volume 104, page 317). However, without waiving their right to stand on this rule, said Railroad Companies direct the Committee's attention to the following provisions of the agreement effective November 1, 1929 with revisions to April 1, 1954 between said Railroad Companies and The Brotherhood of

Railroad Trainmen, which support the actions of the Railroad Companies, viz:

"The quotations of agreement provisions. Same as in Exhibit A. Omitted. Printed side folio 180, page 130, supra."

[fol. 319] These agreement rules authorize the abolishment or rearrangement of runs when, in the judgment of management, this is made necessary, or desirable for business reasons, or because of changed conditions, and such rules and rulings authorize changes in terminals deemed necessary or desirable by management as a result of the abolishment or rearrangement of such runs.

[fol. 320] III

Said Railroad Companies have not violated the provisions of Article VIII (b) of said Mediation Agreement No. A-5248.

Said Railroad Companies have not violated the provisions of Article VIII (b) of Mediation Agreement Case No. A-5248 with the Brotherhood of Railroad Trainmen. Those provisions prohibit a carrier from serving any notice or progressing any pending notice (1) to decrease the rate of compensation provided in existing agreements or understandings, or (2) to eliminate agreements providing for any rate of compensation, or (3) to negotiate agreements which would have the effect of decreasing the number of employees required to be used under existing agreements. Said Railroad Companies have not done any of these things and therefore the provisions of said Article VIII (b) have not been violated.

JURISDICTIONAL QUESTION

As stated on page 1 hereof, said Railroad Companies refer this dispute to the Disputes Committee subject to the following jurisdictional question:

Article VIII of said Mediation Agreement No. A-5248, with exceptions not here relevant, only prohibits a carrier from serving any notice or progressing any pending notice

(1) to decrease the rate of compensation provided in existing agreements or understandings, or (2) to eliminate agreements providing for any rate of compensation, or (3) to negotiate agreements which would have the effect of [fol. 321] decreasing the number of employees required to be used under existing agreements. The petitioning carriers have not served any such notices and they are not attempting to progress any such notices; therefore, they respectfully submit that the Disputes Committee has no jurisdiction of the subject matter of this dispute.

Article X of said Mediation Agreement No. A-5248 provides that "any dispute involving the interpretation or application of any of the terms" of said Agreement shall be referred to the Disputes Committee created by that Article. We respectfully submit that this dispute does not involve the "terms" of said Agreement, that the basic question is whether said Agreement applies to the subject matter of this dispute, and that power to answer that question has not been vested in the Disputes Committee.

The Railroad Companies therefore request the Committee to dismiss this submission for want of jurisdiction or, in the alternative and in the event that the Committee should determine that it has jurisdiction, that the Committee find and hold that said Railroad Companies have not violated any of the provisions of Article VIII of said National Agreement of April 5, 1957.

Dated December 10, 1958.

Respectfully submitted,

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY,
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS,

By /s/ A. F. WINKEL
Assistant General Manager

[fol. 322] EXHIBITS 1 AND 2

Omitted. Printed side folios 91 and 92, pages 80 and 81, supra. Same as Exhibits 2 and 3 to Affidavit.

[fol. 324] EXHIBIT G TO AMENDMENT AND SUPPLEMENT TO COMPLAINT

DISPUTES COMMITTEE

CREATED BY ARTICLE X OF

MEDIATION AGREEMENT CASE NO. A-5464

DATED JULY 18, 1957

BETWEEN RAILROADS REPRESENTED BY THE EASTERN, WESTERN AND SOUTHEASTERN CARRIERS' CONFERENCE COMMITTEES AND ENGINEERS OF SUCH CARRIERS REPRESENTED BY THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS

Case .....

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY and MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

VS.

THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS

Subject to the jurisdictional question hereinafter stated, Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas respectfully refer the following dispute to the Disputes Committee created by Article X of Mediation Agreement No. A-5464 dated July 18, 1957, between railroads represented by the Eastern, Western and Southeastern Carriers' Conference Committees and engineers of such carriers represented by The Brotherhood of Locomotive Engineers.

PARTIES

The parties to the dispute are Missouri-Kansas-Texas Railroad Company, Missouri-Kansas-Texas Railroad Company of Texas, and The Brotherhood of Locomotive Engineers.

[fol. 325] QUESTION AT ISSUE

The Brotherhood of Locomotive Engineers claims that Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas violated the provisions of Article VIII (b) of said Mediation Agreement No. A-5464 when they, by their General Order No. 119 dated October 2, 1958, and effective at 12.01 A. M. on October 19, 1958, rearranged assigned way freight service between North Yard (Wichita Falls, Texas) and Forgan, Oklahoma, as follows:

(a) Cancelled existing way freight assignments;

(b) Assigned two wayfreight crews to operate between North Yard (Wichita Falls, Texas) and Elk City, Oklahoma, a distance of 134.2 miles, daily except Sunday, with North Yard the home terminal of both crews, and with Sunday layover at North Yard for one crew and at Elk City for the other;

(c) Assigned one wayfreight crew to operate from Elk City, Oklahoma to Forgan, Oklahoma, a distance of 168 miles, on Mondays, Wednesdays and Fridays, and from Forgan to Elk City on Tuesdays, Thursdays and Saturdays, with Elk City the home terminal and with Sunday layover at Elk City;

and when they, by their General Order No. 120 dated October 2, 1958, and effective at 12.01 A. M. on October 19, 1958, abolished Altus, Oklahoma and Woodward, Oklahoma, as away-from-home terminals for unassigned crews in through freight service and in lieu thereof established Elk City, Oklahoma, and Forgan, Oklahoma, as away-from-home terminals for such crews, leaving Wichita Falls as the home

terminal for such crews. Said Railroad Companies deny any violation.

[fol. 326] Ex Parte Statement of Facts

Omitted. Printed side folio 169, page 119, supra.

This is the same as the Statement of Facts in Exhibit A except, in Exhibit G, the Respondents are called "Railroad Companies" and reference is made only to Respondents' engineers.

[fol. 329] Position of Carriers

Said Railroad Companies deny that they, or either of them, have violated any provision of Article VIII (b) of said Mediation Agreement No. A-5464. Their position will be developed under the following headings:

I

There is no provision in any agreement between said Railroad Companies and The Brotherhood of Locomotive Engineers which prohibited said Railroad Companies from taking the action of which said Brotherhood complains. Absent such prohibition, the carriers had the right to make such changes.

II

Express provisions of the agreement effective October 1, 1918, as amended October 1, 1948, between said Railroad Companies and The Brotherhood of Locomotive Engineers authorize the action of said Railroad Companies of which said Brotherhood complains.

III

Said Railroad Companies have not violated the provisions of Article 4 of said National Agreement of May 23, 1952.

Quotations from agreements will be made a part of the position of said Railroads Companies.

[fol. 330] I

There is no provision in any agreement between said Railroad Companies and The Brotherhood of Locomotive Engineers which prohibited said Railroad Companies from taking the action of which said Brotherhood complains. Absent such prohibition, the carriers had the right to make such changes.

The agreements between said Railroad Companies and The Brotherhood of Locomotive Engineers may be searched in vain for any provision which prohibited said Railroad Companies from making the changes of which said Brotherhood complains. In the absence of such prohibition, said Railroad Companies had the right to make such changes. This has been made abundantly clear by many awards of the First Division. We quote from a few of them, viz:

[fol. 331] "Quotations from the awards. Omitted. Printed side folio 174, page 124, supra. Same as in Exhibit A."

II

Express provisions of the agreement effective October 1, 1918, as amended October 1, 1948, between said Railroad Companies and The Brotherhood of Locomotive Engineers authorize the action of said Railroad Companies of which said Brotherhood complains.

As held by the National Railroad Adjustment Board, First Division, with Referee Alfred A. Colby, a carrier "is not obliged to point to any rule" which authorizes its action but, conversely, the burden is on a claimant union to show that a carrier "has surrendered or limited its basic management functions by the use of language in some rule that is susceptible of no other interpretation." (Docket 24234; [fol. 332] Award 15119, page 5, Bound Volume 104, page 317). However, without waiving their right to stand on this rule, said Railroad Companies direct the Committee's attention to the following provisions of the agreement effective October 1, 1918 as amended October 1, 1948 between said Railroad Companies and The Brotherhood of Locomo-

tive Engineers, which support the actions of the Railroad Companies, viz:

"The quotations of agreement provisions. Same as in Exhibit A. Omitted. Printed side folio 180, page 130, supra."

[fol. 333] These agreement rules authorize the abolishment or rearrangement of runs when, in the judgment of management, this is made necessary or desirable for business reasons, or because of changed conditions, and such rules and rulings authorize changes in terminals deemed necessary or desirable by management as a result of the abolishment or rearrangement of such runs.

[fol. 334] III

Said Railroad Companies have not violated the provisions of Article VIII (b) of said Mediation Agreement No. A-5464

Said Railroad Companies have not violated the provisions of Article VIII (b) of Mediation Agreement Case No. A-5464 with The Brotherhood of Locomotive Engineers. Those provisions prohibit a carrier from serving any notice or progressing any pending notice (1) to decrease the rate of compensation provided in existing agreements or understandings, or (2) to eliminate agreements providing for any rate of compensation, or (3) to negotiate agreements which would have the effect of decreasing the number of employees required to be used under existing agreements. Said Railroad Companies have not done any of these things and therefore the provisions of said Article VIII (b) have not been violated.

JURISDICTIONAL QUESTION

As stated on page 1 hereof, said Railroad Companies refer this dispute to the Disputes Committee subject to the following jurisdictional question:

Article VIII of said Mediation Agreement No. A-5464, with exceptions not here relevant, only prohibits a carrier

from serving any notice or progressing any pending notice (1) to decrease the rate of compensation provided in existing agreements or understandings, or (2) to eliminate agreements providing for any rate of compensation, or (3) to negotiate agreements which would have the effect of [fol. 335] decreasing the number of employees required to be used under existing agreements. The petitioning carriers have not served any such notices and they are not attempting to progress any such notices; therefore, they respectfully submit that the Disputes Committee has no jurisdiction of the subject matter of this dispute.

Article X (a) of said Mediation Agreement No. A-5464 provides that "any dispute involving the interpretation or application of any of the terms" of said Agreement shall be referred to the Disputes Committee created by that Article. We respectfully submit that this dispute does not involve the "terms" of said Agreement, that the basic question is whether said Agreement applies to the subject matter of this dispute, and that power to answer that question has not been vested in the Disputes Committee.

The Railroad Companies therefore request the Committee to dismiss this submission for want of jurisdiction or in the alternative and in the event that the Committee should determine that it has jurisdiction, that the Committee find and hold that said Railroad Companies have not violated any of the provisions of Article VIII of said National Agreement of July 18, 1957.

Dated December 10, 1958.

Respectfully submitted,

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY,
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS,

By /s/ A. F. WINKEL
Assistant General Manager

[fol. 336] EXHIBITS 1 AND 2

Omitted. Printed side folios 91 and 92, pages 80 and 81, supra. Same as Exhibits 2 and 3 to Affidavit.

[fol. 338] EXHIBIT H TO AMENDMENT AND SUPPLEMENT TO COMPLAINT

DISPUTES COMMITTEE

CREATED BY ARTICLE VII OF

MEDIATION AGREEMENT CASE NO. A-5294

DATED JUNE 12, 1957

BETWEEN RAILROADS REPRESENTED BY THE EASTERN, WESTERN AND SOUTHEASTERN CARRIERS' CONFERENCE COMMITTEES AND THE EMPLOYES OF SUCH CARRIERS REPRESENTED BY THE ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN

Case .....

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY and
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

VS.

THE ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN

Subject to the jurisdictional question hereinafter stated, Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas respectfully refer the following dispute to the Disputes Committee created by Article VII of Mediation Agreement No. A-5294 dated June 12, 1957, between railroads represented by the Eastern, Western and Southeastern Carriers' Conference Committees and the employes of such carriers represented by The Order of Railway Conductors and Brakemen.

PARTIES

The parties to the dispute are Missouri-Kansas-Texas Railroad Company, Missouri-Kansas-Texas Railroad Company of Texas, and The Order of Railway Conductors and Brakemen.

[fol. 339] QUESTION AT ISSUE

The Order of Railway Conductors and Brakemen claims that Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas violated the provisions of Article V (b) of said Mediation Agreement No. A-5294 when they, by their General Order No. 119 dated October 2, 1958, and effective at 12.01 A.M. on October 19, 1958, rearranged assigned way freight service between North Yard (Wichita Falls, Texas) and Forgan, Oklahoma, as follows:

(a) Cancelled existing way freight assignments;

(b) Assigned two wayfreight crews to operate between North Yard (Wichita Falls, Texas) and Elk City, Oklahoma, a distance of 134.2 miles, daily except Sunday, with North Yard the home terminal of both crews, and with Sunday layover at North Yard for one crew and at Elk City for the other;

(c) Assigned one wayfreight crew to operate from Elk City, Oklahoma to Forgan, Oklahoma, a distance of 168 miles, on Mondays, Wednesdays and Fridays, and from Forgan to Elk City on Tuesdays, Thursdays and Saturdays, with Elk City the home terminal and with Sunday layover at Elk City;

and when they, by their General Order No. 120 dated October 2, 1958, and effective at 12.01 A. M. on October 19, 1958, abolished Altus, Oklahoma and Woodward, Oklahoma, as away-from-home terminals for unassigned crews in through freight service and in lieu thereof established Elk City, Oklahoma, and Forgan, Oklahoma, as away-from-home terminals for such crews, leaving Wichita Falls as the home terminal for such crews. Said Railroad Companies deny any violati

[fol. 340] Ex Parte Statement of Facts

Omitted. Printed side folio 169, page 119, supra.

This is the same as the Statement of Facts in Exhibit A except, in Exhibit H, the Respondents are called "Railroad Companies" and reference is made only to Respondents' conductors.

[fol. 343] Position of Carriers

Said Railroad Companies deny that they, or either of them, have violated any provision of Article V (b) of said Mediation Agreement No. A-5294. Their position will be developed under the following headings:

I

There is no provision in any agreement between said Railroad Companies and The Order of Railway Conductors and Brakemen which prohibited said Railroad Companies from taking the action of which said Order complains. Absent such prohibition, the carriers had the right to make such changes.

II

Express provisions of the agreement effective November 1, 1929 with revisions to April 1, 1954, between said Railroad Companies and The Order of Railway Conductors and Brakemen authorize the action of said Railroad Companies of which said Order complains.

III

Said Railroad Companies have not violated the provisions of Article V (b) of said Mediation Agreement No. A-5294.

Quotations from agreement will be made a part of the position of said Railroad Companies.

[fol. 344] I

There is no provision in any agreement between said Railroad Companies and The Order of Railway Conductors and Brakemen which prohibited said Railroad Companies from taking the action of which said Order complains. Absent such prohibition, the carriers had the right to make such changes.

The agreements between said Railroad Companies and The Order of Railway Conductors and Brakemen may be searched in vain for any provision which prohibited said Railroad Companies from making the changes of which said Order complains. In the absence of such prohibition, said Railroad Companies had the right to make such changes. This has been made abundantly clear by many awards of the First Division. We quote from a few of them, viz:

"Quotations from the awards. Same as in Exhibit A Omitted. Printed side folio 174, page 124, supra."

[fol. 345] II

Express provisions of the agreement effective November 1, 1929, between said Railroad Companies and The Order of Railway Conductors and Brakemen authorize the action of said Railroad Companies of which said Order complains.

As held by the National Railroad Adjustment Board, First Division, with Referee Alfred A. Colby, a carrier "is not obliged to point to any rule" which authorizes its action but, conversely, the burden is on a claimant union to show that a carrier "has surrendered or limited its basic management functions by the use of language in some rule that is susceptible of no other interpretation." (Docket 24234; [fol. 346] Award 15119, page 5, Bound Volume 104, page 317). However, without waiving their right to stand on this rule, said Railroad Companies direct the Committee's attention to the following provisions of the agreement effective November 1, 1929, with revisions to April 1, 1954, between said Railroad Companies and The Order of Railway

Conductors and Brakemen, which support the actions of said Railroad Companies, viz:

"The quotations of agreement provisions. Same as in Exhibit A. Omitted. Printed side folio 180, page 130, supra."

[fol. 347] These agreement rules authorize the abolishment or rearrangement of runs when, in the judgment of management, this is made necessary or desirable for business reasons, or because of changed conditions, and such rules and rulings authorize changes in terminals deemed necessary or desirable by management as a result of the abolishment or rearrangement of such runs.

III

Said Railroad Companies have not violated the provisions of Article V (b) of said Mediation Agreement No. A-5294.

Said Railroad Companies have not violated the provisions of Article V (b) of Mediation Agreement Case No. A-5294 with The Order of Railway Conductors and Brakemen. Those provisions prohibit a carrier from serving any notice or progressing any pending notice (1) to decrease the [fol. 348] rate of compensation provided in existing agreements or understandings, or (2) to eliminate agreements providing for any rate of compensation, or (3) to negotiate agreements which would have the effect of decreasing the number of employees required to be used under existing agreements. Said Railroad Companies have not done any of these things and therefore the provisions of said Article V (b) have not been violated.

JURISDICTIONAL QUESTION

As stated on page 1 hereof, said Railroad Companies refer this dispute to the Disputes Committee subject to the following jurisdictional question:

Article V of said Mediation Agreement No. A-5294, with exceptions not here relevant, only prohibits a carrier from

decrease the rate of compensation provided in existing agreements or understandings, or (2) to eliminate agreements providing for any rate of compensation, or (3) to negotiate agreements which would have the effect of decreasing the number of employees required to be used under existing agreements. The petitioning carriers have not served any such notices and they are not attempting to progress any such notices; therefore, they respectfully submit that the Disputes Committee has no jurisdiction of the subject matter of this dispute.

[fol. 349] Article VII of said Mediation Agreement No. A-5294 provides that "any dispute involving the interpretation or application of any of the terms" of said Agreement shall be referred to the Disputes Committee created by that Article. We respectfully submit that this dispute does not involve the "terms" of said Agreement, that the basic question is whether said Agreement applies to the subject matter of this dispute, and that power to answer that question has not been vested in the Disputes Committee.

The Railroad Companies therefore request the Committee to dismiss this submission for want of jurisdiction or, in the alternative and in the event that the Committee should determine that it has jurisdiction, that the Committee find and hold that said Railroad Companies have not violated any of the provisions of Article V of said National Agreement of June 12, 1957.

Dated December 10, 1958.

Respectfully submitted,

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY,
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS,

By /s/ A. F. WINKEL
Assistant General Manager

[fol. 350] EXHIBITS 1 AND 2

Omitted. Printed side folios 91 and 92, pages 80 and 81, supra. Same as Exhibits 2 and 3 to Affidavit.

[fol. 352] EXHIBIT I TO AMENDMENT AND SUPPLEMENT TO COMPLAINT

NATIONAL MEDIATION BOARD

Case .....

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY and MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

vs.

THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS, THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, THE BROTHERHOOD OF RAILROAD TRAINMEN, and THE ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN

Subject to the jurisdictional question hereinafter stated, Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas hereby apply to the National Mediation Board for an interpretation of the meaning or application of Article VIII (b) of Mediation Agreement Case No. A-5241, dated November 20, 1956, between the railroads represented by the Eastern, Western and Southeastern Carriers' Conference Committees and the employees of such carriers represented by The Brotherhood of Locomotive Firemen and Enginemen, of Article VIII (b) of Mediation Agreement Case No. A-5248 dated April 5, 1957, between the railroads represented by said Conference Committees and the employees of such carriers represented by The Brotherhood of Railroad Trainmen, of Article VIII (b) of Mediation Agreement Case No. A-5464 dated July 18, 1957, between the railroads represented by said Conference Committees and the em-

ployees represented by The Brotherhood of Locomotive Engineers, and of Article V (b) of Mediation Agreement Case No. A-5294 dated June 12, 1957, between the railroads [fol. 353] represented by such Conference Committees and the employees of such carriers represented by The Order of Railway Conductors and Brakemen, as applied to the following statement of facts.

PARTIES

The parties involved are Missouri-Kansas-Texas Railroad Company, Missouri-Kansas-Texas Railroad Company of Texas, The Brotherhood of Locomotive Engineers, The Brotherhood of Locomotive Firemen and Enginemen, The Brotherhood of Railroad Trainmen, and The Order of Railway Conductors and Brakemen.

DISPUTE

Applicant railroad companies, by their General Order No. 119 dated October 2, 1958, and effective at 12.01 A. M. on October 19, 1958, rearranged assigned way freight service between North Yard (Wichita Falls, Texas) and Forgan, Oklahoma, as follows:

(a) Cancelled existing way freight assignments;

(b) Assigned two wayfreight crews to operate between North Yard (Wichita Falls, Texas) and Elk City, Oklahoma, a distance of 134.2 miles, daily except Sunday, with North Yard the home terminal of both crews, and with Sunday layover at North Yard for one crew and at Elk City for the other; and

(c) Assigned one wayfreight crew to operate from Elk City, Oklahoma to Forgan, Oklahoma, a distance of 168 miles, on Mondays, Wednesdays and Fridays, and from Forgan to Elk City on Tuesdays, Thursdays and Saturdays, with Elk City the home terminal and with Sunday layover at Elk City.

[fol. 354] Applicant railroad companies also, by their General Order No. 120 dated October 2, 1958, and effective

at 12.01 A.M. on October 19, 1958, abolished Altus, Oklahoma, and Woodward, Oklahoma, as away-from-home terminals for unassigned crews in through freight service and in lieu thereof established Elk City, Oklahoma, and Forgan, Oklahoma, as away-from-home terminals for such crews, leaving Wichita Falls as the home terminal for such crews.

Said Brotherhoods and Order claim that the applicant railroad companies, in taking the actions above described, violated the provisions of Article VIII (b) of Mediation Agreement Case No. A-5241 dated November 20, 1956, violated the provisions of Article VIII (b) of Mediation Agreement Case No. A-5248 dated April 5, 1957, violated the provisions of Article VIII (b) of Mediation Agreement Case No. A-5464 dated July 18, 1957, and violated the provisions of Article V (b) of Mediation Case No. A-5294 dated June 12, 1957. The applicant railroad companies deny that any such violations occurred.

Statement of Facts

Omitted. Printed side folio 169, page 119, supra.

This is the same as the Statement of Facts in Exhibit A except, in Exhibit I, the Respondents are called "applicant railroad companies" and "railroad companies" and the word "controversy" is used instead of the word "proceeding."

[fol. 358]

Position of Applicant Railroad Companies

The applicant railroad companies deny that they have committed any of the violations claimed by said Brotherhoods and Order. Their position will be developed under the following headings:

I

There is no provision in any agreement with the unions which prohibited the railroad companies from taking the action of which the unions complain. Absent such

prohibition, the railroad companies had the right to make such changes.

II

Express provisions of agreements with the unions authorize the action of the railroad companies of which the unions complain.

III

The railroad companies have not violated the provisions of Article VIII (b) of Mediation Agreement Case No. A-5241, or Article VIII (b) of Mediation Agreement Case No. A-5248, or Article VIII (b) of Mediation Agreement Case No. A-5464, or of Article V (b) of Mediation Agreement Case No. A-5294.

[fol. 359] Quotations from agreements will be made a part of the railroad companies' position.

I

There is no provision in any agreement with the unions which prohibited the railroad companies from taking the action of which the unions complain. Absent such prohibition, the railroad companies had the right to make such changes.

The agreements between applicant railroad companies and said unions, on file with the Board, may be searched in vain for any provision which prohibited the railroad companies from making the changes of which the unions complain. In the absence of such prohibition, the railroad companies had the right to make such changes. This has been made abundantly clear by many awards of the National Railroad Adjustment Board. We quote from a few of them, viz:

"Quotations from the awards. Same as in Exhibit A. Omitted. Printed side folio 174, page 124, supra."

[fol. 360] II

Express provisions of agreements with the unions authorize the action of the railroad companies of which the unions complain.

As held by the National Railroad Adjustment Board, [fol. 361] First Division, with Referee Alfred A. Colby, a carrier "is not obliged to point to any rule" which authorizes its action but, conversely, the burden is on a claimant union to show that a carrier "has surrendered or limited its basic management functions by the use of language in some rule that is susceptible of no other interpretation." (Docket 24234; Award 15119, page 5; Bound Volume 104, page 317). However, without waiving their right to stand on this rule, the railroad companies direct the Board's attention to the following provisions of agreements with the respondent unions, which support the actions of the carriers, viz:

"The quotations of agreement provisions. Same as in Exhibit A. Omitted. Printed side folio 180, page 130, supra."

[fol. 367] These agreement rules and freight service rulings authorize the abolishment or rearrangement of runs when, in the judgment of management, this is made necessary or desirable for business reasons, or because of changed conditions, and such rules and rulings authorize changes in terminals deemed necessary or desirable by management as a result of the abolishment or rearrangement of such runs.

III

The railroad companies have not violated the provisions of Article VIII (b) of Mediation Agreement Case No. A-5241, or Article VIII (b) of Mediation Agreement Case No. A-5248, or Article (b) of Mediation Agreement Case No. A-5464, or of Article V (b) of Mediation Agreement Case No. A-5294.

The railroad companies have not violated the provisions of Article VIII (b) of Mediation Agreement Case No. A-

5241 dated November 20, 1956, with The Brotherhood of Locomotive Firemen and Enginemen, or the provisions of Article VIII (b) of Mediation Agreement Case No. A-5248 dated April 5, 1957, with The Brotherhood of Railroad Trainmen, or the provisions of Article VIII (b) of Mediation Agreement Case No. A-5464 dated July 18, 1957, with The Brotherhood of Locomotive Engineers, or the provisions of Article V (b) of Mediation Agreement Case No. A-5294 dated June 12, 1957, with The Order of Railway Conductors and Brakemen. A copy of each article is attached hereto as Exhibits 3, 4, 5 and 6, respectively.
[fol. 368] The relevant provisions of these articles are substantially the same. They prohibit a carrier from serving any notice or progressing any pending notice (1) to decrease the rate of compensation provided in existing agreements or understandings, or (2) to eliminate agreements providing for any rate of compensation, or (3) to negotiate agreements which would have the effect of decreasing the number of employees required to be used under existing agreements. Applicant railroad companies have not done any of these things and therefore the provisions of these articles have not been violated.

Jurisdictional Question

As stated on page 1 hereof, the railroad companies make this application to the National Mediation Board subject to the following jurisdictional question:

The basic question is whether Article VIII (b) of Mediation Agreement Case No. A-5241 dated November 20, 1956, Article VIII (b) of Mediation Agreement Case No. A-5248 dated April 5, 1957, Article VIII (b) of Mediation Agreement Case No. A-5464 dated July 18, 1957, and Article V (b) of Mediation Agreement Case No. A-5294 dated June 12, 1957, apply to the particular fact situation as disclosed by this application. This Board has declared that it "does not and cannot attempt to interpret the application of the terms of a mediation agreement to particular situations" and that such restriction "is necessary to prevent infringement on the duties and responsibilities of the National Railroad Adjustment Board." W[illegible]

[fol. 369] the Board's Twenty-third Annual Report for the Fiscal Year Ended June 30, 1957, viz:

> "Under section 5, second, of the Railway Labor Act, the National Mediation Board has the duty of interpreting the specific terms of mediation agreements. Requests for such interpretations may be made by either party to mediation agreements, or by both parties jointly. The law provides that interpretations must be made by the Board within 30 days following a hearing, at which both parties may present and defend their respective positions.
>
> "In making such interpretations, the National Mediation Board can consider only the meaning of the specific terms of the mediation agreement. *The Board does not and cannot attempt to interpret the application of the terms of a mediation agreement to particular situations. This restriction in making interpretations under section 5, second, is necessary to prevent infringement on the duties and responsibilities of the National Railroad Adjustment Board under section 3 of title I of the Railway Labor Act,* and adjustment boards set up under the provisions of section 204 of title II of the act in the airline industry. These sections of the law make it the duty of such adjustment boards to decide disputes arising out of employee grievances and out of the interpretation or application of agreement rules.
>
> "In many instances mediation has resulted in the negotiation of new basic working agreements, and complete revisions of existing working agreements. It has been the view of this Board that disputes growing out of the application or interpretation of the rules of such agreements should be made by the appropriate adjustment boards, and not by the National Mediation Board under section 5, second, of the act." (Italics ours) (page 42).

The claims of said Brotherhoods and Order that the railroad companies have violated said pro[illegible]

ation agreements have been submitted by the railroad companies to the National Railroad Adjustment Board, First Division, as shown by the copy of their submission to that Board attached hereto, marked "Exhibit 7", and made a part hereof.

Subject to jurisdictional questions, said claims of said Brotherhoods and Order have also been submitted by the railroad companies to the Disputes Committees created by Article X of Mediation Agreement Case No. A-5241 dated November 20, 1956, Article X of Mediation Agreement [fol. 370] Case No. A-5248 dated April 5, 1957, Article X of Mediation Agreement Case No. A-5464 dated July 18, 1957, and Article VII of Mediation Agreement Case No. A-5294 dated June 12, 1957, as shown by copies of those submissions attached hereto, marked "Exhibits 8, 9, 10 and 11" respectively, and made parts hereof.

Article VIII of Mediation Agreement Case A-5241 dated November 20, 1956, Article VIII of Mediation Agreement Case No. A-5248 dated April 5, 1957, Article VIII of Mediation Agreement Case No. A-5464 dated July 18, 1957, and Article V of Mediation Agreement Case No. A-5294 dated June 12, 1957, with exceptions not here relevant, only prohibit a carrier from serving any notice or progressing any pending notice (1) to decrease the rate of compensation provided in existing agreements or understandings, or (2) to eliminate agreements providing for any rate of compensation, or (3) to negotiate agreements which would have the effect of decreasing the number of employees required to be used under existing agreements. The railroad companies have not served any such notices and they are not attempting to progress any such notices.

The railroad companies therefore request the Board to dismiss this application for want of jurisdiction or, in the alternative and in the event that the Board determines that it has jurisdiction, that the Board find and hold that the railroad companies have not violated any of the provisions of Article VIII (b) of Mediation Agreement Case No. A-5241 dated November 20, 1956, or any of the provi

A-5248 dated April 5, 1957, or any of the provisions of [fol. 371] Article VIII (b) of Mediation Agreement Case No. A-5464 dated July 18, 1957, or any of the provisions of Article V (b) of Mediation Agreement Case No. A-5294 dated June 12, 1957.

Dated December 16, 1958.

Respectfully submitted,

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY,
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS,

By /s/ A. F. WINKEL
Assistant General Manager

[fol. 372] EXHIBITS 1 AND 2

Omitted. Printed side folios 91 and 92, pages 80 and 81, supra. Same as Exhibits 2 and 3 to Affidavit.

[fol. 374] EXHIBIT 3

Omitted. Printed side folio 213, page 160, supra. Same as Exhibit 16 to Exhibit A.

[fol. 375] EXHIBIT 4

Omitted. Printed side folio 214, page 161, supra. Same as Exhibit 17 to Exhibit A.

[fol. 377] EXHIBIT 5

Omitted. Printed side folio 218, page 167, supra. Same

[fol. 378] EXHIBIT 6

Omitted. Printed side folio 216, page 164, supra. Same as Exhibit 18 to Exhibit A.

[fol. 380] EXHIBIT J TO AMENDMENT AND SUPPLEMENT TO COMPLAINT

NATIONAL MEDIATION BOARD

Case .....

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY and MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

vs.

THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS, THE ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, and THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN

Subject to the jurisdictional question hereinafter stated, Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas hereby apply to the National Mediation Board for an interpretation of the meaning or application of Article 4 of the National Agreement dated May 23, 1952, between the railroads represented by the Eastern, Western and Southeastern Carriers' Conference Committees and engineers, firemen, hostlers and hostler helpers of such carriers represented by The Brotherhood of Locomotive Engineers, of Article 4 of the National Agreement dated May 23, 1952, between the railroads represented by said Conference Committees and firemen, engineers, hostlers and hostler helpers of such carriers represented by The Brotherhood of Locomotive Firemen and Enginemen, and of Article 6 of the National

sented by The Order of Railway Conductors (now The Order of Railway Conductors and Brakemen), as applied to the following statement of facts.

PARTIES

The parties involved are Missouri-Kansas-Texas Railroad Company, Missouri-Kansas-Texas Railroad Company of Texas, The Brotherhood of Locomotive Engineers, The Brotherhood of Locomotive Firemen and Enginemen, and The Order of Railway Conductors and Brakemen.

DISPUTES

Applicant railroad companies, by their General Order No. 119 dated October 2, 1958, and effective at 12.01 A. M. on October 19, 1958, rearranged assigned way freight service between North Yard (Wichita Falls, Texas) and Forgan, Oklahoma, as follows:

(a) Cancelled existing way freight assignments;

(b) Assigned two wayfreight crews to operate between North Yard (Wichita Falls, Texas) and Elk City, Oklahoma, a distance of 134.2 miles, daily except Sunday, with North Yard the home terminal of both crews, and with Sunday layover at North Yard for one crew and at Elk City for the other; and

(c) Assigned one wayfreight crew to operate from Elk City, Oklahoma to Forgan, Oklahoma, a distance of 168 miles, on Mondays, Wednesdays and Fridays, and from Forgan to Elk City on Tuesdays, Thursdays and Saturdays, with Elk City the home terminal and with Sunday layover at Elk City.

Applicant railroad companies also, by their General Order No. 120 dated October 2, 1958, and effective at 12.01 A. M. on October 19, 1958, abolished Altus, Oklahoma, and Woodward, Oklahoma, as away-from-home terminals for

[fol. 382] [illegible]

crews, leaving Wichita Falls as the home terminal for such crews.

Said Brotherhoods and Order claim that the applicant railroad companies, in taking the actions above described, violated the provisions of Article 4 of said National Agreement dated May 23, 1952, with The Brotherhood of Locomotive Engineers, violated the provisions of Article 4 of said National Agreement dated May 23, 1952, with The Brotherhood of Locomotive Firemen and Enginemen, and violated the provisions of Article 6 of said National Agreement dated May 23, 1952, with The Order of Railway Conductors and Brakemen. The applicant railroad companies deny that any such violations occurred and they deny that the provisions of Article 6 of said National Agreement dated May 23, 1952, with The Order of Railway Conductors (now The Order of Railway Conductors and Brakemen) constituted an agreement between applicant railroad companies and said Order on October 19, 1958, or now constitute an agreement between those parties.

Statement of Facts

Omitted. Printed side folio 169, page 119, supra.

This is the same as the Statement Facts in Exhibit A except, in Exhibit J, the Respondents are called "applicant railroad companies" and "railroad companies" and the word "controversy" is used instead of the word "proceeding."

[fol. 386]

Position of Applicant Railroad Companies

The applicant railroad companies deny that they have committed any of the violations claimed by said Brotherhoods and Order, and they deny that the provisions of Article 6 of said National Agreement dated May 23, 1952, with The Order of Railway Conductors (now The Order of Railway Conductors and Brakemen) constituted an agreement between said railroad companies and said Order on October 19, 1958, or now constitute an agreement between those parties. The position of said railroad companies will be developed under the following headings:

I

There is no provision in any agreement with the unions which prohibited the railroad companies from taking the action of which the unions complain. Absent such prohibition, the railroad companies had the right to make such changes.

II

Express provisions of agreements with the unions authorize the action of the railroad companies of which the unions complain.

III

The provisions of Article 6 of the National Agreement dated May 23, 1952, between The Order of Railway Conductors (now The Order of Railway Conductors and Brakemen), which became an agreement between [fol. 387] said Order and the railroad companies on August 1, 1952, were cancelled in the year 1954 and said provisions then ceased to constitute an agreement between said Order and the railroad companies.

IV

(a) The railroad companies have not violated the provisions of Article 6 of the National Agreement dated May 23, 1952, between The Order of Railway Conductors (now The Order of Railway Conductors and Brakemen) and representatives of numerous railroad companies, including the applicant railroad companies, which became an agreement between said Order and said railroad companies on August 1, 1952, and which were cancelled in the year 1954.

(b) The railroad companies have not violated the provisions of Article 4 of the National Agreement dated May 23, 1952, between The Brotherhood of Locomotive Engineers and representatives of numerous railroad companies, including

the applicant railroad companies, which became an agreement on August 1, 1952, between said Brotherhood and said railroad companies.

(c) The railroad companies have not violated the provisions of Article 4 of the National Agreement dated May 23, 1952, between The Brotherhood of Locomotive Firemen and Enginemen and representatives of numerous railroad companies, including the applicant railroad companies, which became an agreement on August 1, 1952, between said Brotherhood and said railroad companies.

[fol. 388] Documentary evidence in exhibit form, with quotations from agreements, will be made a part of the railroad companies' position.

I

There is no provision in any agreement with the unions which prohibited the railroad companies from taking the action of which the unions complain. Absent such prohibition, the railroad companies had the right to make such changes.

The agreements between applicant railroad companies and said unions, on file with the Board, may be searched in vain for any provision which prohibited the railroad companies from making the changes of which the unions complain. In the absence of such prohibition, the railroad companies had the right to make such changes. This has been made abundantly clear by many awards of the National Railroad Adjustment Board. We quote from a few of them, viz.:

"Quotations from the awards. Same as in Exhibit A. Omitted. Printed side folio 174, page 124, supra."

[fol. 389] II

Express provisions of agreements with the unions authorize the action of the railroad companies of which the unions complain.

As held by the National Railroad Adjustment Board, [fol. 390] First Division, with Referee Alfred A. Colby, a carrier "is not obliged to point to any rule" which authorizes its action but, conversely, the burden is on a claimant union to show that a carrier "has surrendered or limited its basic management functions by the use of language in some rule that is susceptible of no other interpretation." (Docket 24234; Award 15119, page 5; Bound Volume 104, page 317). However, without waiving their right to stand on this rule, the railroad companies direct the Board's attention to the following provisions of agreements with the respondent unions, which support the actions of the carriers, viz:

"The quotations of agreement provisions. Same as in Exhibit A. Omitted. Printed side folio 180, page 130, supra."

[fol. 396] These agreement rules and freight service rulings authorize the abolishment or rearrangement of runs when, in the judgment of management, this is made necessary or desirable for business reasons, or because of changed conditions, and such rules and rulings authorize changes in terminals deemed necessary or desirable by management as a result of the abolishment or rearrangement of such runs.

III

The provisions of Article 6 of the National Agreement dated May 23, 1952, between The Order of Railway Conductors (now The Order of Railway Conductors and Brakemen), which became an agreement between said Order and the railroad companies on August 1, 1952, were cancelled in the year 1954 and said provisions then ceased to constitute an agreement between said Order and the railroad companies.

The Brotherhoods and Order contend that the railroad companies have violated Article 6 of a National Agree-

ment dated May 23, 1952, between The Order of Railway Conductors, now The Order of Railway Conductors and Brakemen, and representatives of numerous railroad companies, including the applicant railroad companies, which became an agreement between said Order and the railroad companies on August 1, 1952. The violation is alleged to have occurred at 12.01 A.M., on October 19, 1958, when there became effective General Orders Nos. 119 and 120, issued by the railroad companies on October 2, 1958, ordering the changes of which the Brotherhoods and Order complain. No such violation could, or did, occur in 1958 [fol. 397] because said agreement of August 1, 1952, was cancelled in the year 1954 when said Order and the railroad companies agreed upon a reprint of their agreements and agreed (1) not to reproduce the provisions of Article 6 of said National Agreement dated May 23, 1952, (2) that said provisions were rejected, and (3) that existing rules or practices were preserved. This is clearly shown by correspondence between the parties and by the 1954 revision of the appendix to the agreement between the railroad companies, The Brotherhood of Railroad Trainmen, and The Order of Railway Conductors, now The Order of Railway Conductors and Brakemen, viz:

"The letter references and appendix revision. Omitted. Same as in Exhibit A. Printed side folio 187, page 138, supra."

[fol. 398] It is clear from the foregoing that Article 6 of said National Agreement dated May 23, 1952, ceased to be an agreement between the railroad companies and The Order of Railway Conductors on April 1, 1954, and therefore could not have been violated by the railroad companies on October 19, 1958, as claimed by the Brotherhoods and Order.

[fol. 399] IV

(a) *The railroad companies have not violated the provisions of Article 6 of the National Agreement dated May 23, 1952, between The Order of Railway Conductors (now The Order of Railway Conductors and Brakemen) and representatives of numerous railroad companies, including the applicant railroad companies, which became an agreement between said Order and the said railroad companies on August 1, 1952, and which were cancelled in the year 1954.*

(b) *The railroad companies have not violated the provisions of Article 4 of the National Agreement dated May 23, 1952, between The Brotherhood of Locomotive Engineers and representatives of numerous railroad companies, including the applicant railroad companies, which became an agreement on August 1, 1952, between said Brotherhood and the railroad companies.*

(c) *The railroad companies have not violated the provisions of Article 4 of the National Agreement dated May 23, 1952, between The Brotherhood of Locomotive Firemen and Enginemen and representatives of numerous railroad companies, including the applicant railroad companies, which became an agreement on August 1, 1952, between said Brotherhood and the railroad companies.*

Attached hereto as Exhibit 9 is a copy of Article 6 of the National Agreement dated May 23, 1952, between The Order of Railway Conductors (now the Order of Railway Conductors and Brakemen) and representatives of numerous railroad companies, which became an agreement on August 1, 1952, between said Order and applicant railroad companies. This agreement has not been violated by the railroad companies because, as shown in the preceding section of this submission, said agreement was cancelled in the year 1954 while the alleged violation occurred on October 19, 1958. In the alternative, the railroad companies allege that if said agreement was in effect on October 19, 1958, and is now in effect, which the railroad companies deny, then and in that event, the railroad com-

panies did not violate said agreement for each and all of [fol. 400] the following reasons:

"The reasons. Omitted. Printed side folio 189a, page 141, supra.

These are the same as in Exhibit A, except in Exhibit J, the Respondents are called 'railroad companies.' "

[fol. 401] For the same reasons, the railroad companies did not violate the provisions of Article 4 of the National Agreement dated May 23, 1952, between The Brotherhood of Locomotive Engineers and representatives of numerous railroads, including the applicant railroad companies, and they did not violate the provisions of Article 4 of the National Agreement dated May 23, 1952, between The [fol. 402] Brotherhood of Locomotive Firemen and Enginemen and representatives of numerous railroad companies, including the applicant railroad companies. (Exhibits 10 and 11 attached to and made parts of this submission).

Decisions of the "National Committee" (commonly called "Disputes Committee") created by Article 6 of the National Agreement dated May 23, 1952, with The Order of Railway Conductors, by Articles 4 of the National Agreements dated May 23, 1952, with The Brotherhood of Locomotive Engineers and The Brotherhood of Locomotive Firemen and Enginemen support the railroad companies' position. Among others are the following:

"The omitted matter appears on printed side folio 191, page 142, supra."

[fol. 403]

JURISDICTIONAL QUESTION

As stated on page 1 hereof, the railroad companies make this application to the National Mediation Board subject to the following jurisdictional question:

The basic question is whether Article 4 of the National Agreement dated May 23, 1952, with The Brotherhood of Locomotive Engineers, Article 4 of the National Agreement dated May 23, 1952, with The Brotherhood of Locomotive Firemen and Enginemen, and Article 6 of the National

Agreement dated May 23, 1952, with The Order of Railway Conductors (now The Order of Railway Conductors and Brakemen), assuming the existence of the latter agreement which is denied, apply to the particular fact situation as disclosed by this application. This Board has declared that it "does not and cannot attempt to interpret the application of the terms of a mediation agreement to particular situations" and that such restriction "is necessary to prevent infringement on the duties and responsibilities of the National Railroad Adjustment Board". We quote from the Board's Twenty-third Annual Report for the Fiscal Year Ended June 30, 1957, viz:

[fol. 404] "The omitted matter appears in Exhibit I, printed side folio 369, page 223, supra."

The claims of said Brotherhoods and Order that the railroad companies have violated said provisions of said national agreements have been submitted by the railroad companies to the National Railroad Adjustment Board, First Division, as shown by the copy of their submission to that Board attached hereto, marked "Exhibit 16", and made a part hereof.

Subject to jurisdictional questions, said claims of said Brotherhoods and Order have also been submitted by the [fol. 405] railroad companies to the National Committee created by Article 4 of said National Agreement dated May 23, 1952, with The Brotherhood of Locomotive Engineers, Article 4 of said National Agreement dated May 23, 1952, with The Brotherhood of Locomotive Firemen and Enginemen, and Article 6 of said National Agreement dated May 23, 1952 with The Order of Railway Conductors (now The Order of Railway Conductors and Brakemen), as shown by copies of those submissions attached hereto, marked "Exhibits 17, 18 and 19" respectively, and made parts hereof.

Article 4 of said National Agreement dated May 23, 1952, with The Brotherhood of Locomotive Engineers, Article 4 of said National Agreement dated May 23, 1952, with The Brotherhood of Locomotive Firemen and Engine-

men, and Article 6 of said National Agreement dated May 23, 1952, with The Order of Railway Conductors (now The Order of Railway Conductors and Brakemen), assuming the existence of the latter agreement which is denied, do not apply to the runs and terminals in question for each and all of the reasons stated in paragraphs (a) to (f), inclusive, on preceding pages 20 and 21.

Articles 4 and 6 of said National Agreements provide that either party may invoke the services of the National Mediation Board if the parties fail to agree on the "proposal" of the carrier, which presupposes a proposal within the purview of those articles. In this case, there was no proposal and none was required because Articles 4 and 6 of said National Agreements did not apply to the runs and terminals in question.

[fol. 406] The alleged violations of Articles 4 and 6 of said National Agreements by the railroad companies were submitted to the Board on October 14, 1958, by said Brotherhoods and Order* and, on November 5, 1958, after investigation by a mediator, the Board closed its file C-2827 and held that the dispute was not one subject to docketing and mediation on the basis of such investigation and in view of the fact that the dispute appeared identical with that covered by the Board's Case E-56, which was closed on October 22, 1956. Case E-56 involved the same controversy as that involved in the Board's file C-2394. With respect to that file, the Board, through its Executive Secretary, wired the parties on February 10, 1956, as follows:

> "Investigation of this file indicates that carrier has complied with Article 10(f) in Conductors and Brakemen's agreement and Article 34 of Engineers agreement by serving notice required under those articles of change in assignment. Investigation further indicates that no formal notices have been served by either party on the other for change in agreement on

---

* Together with an alleged violation of Article 6 of the National Agreement dated May 6, 1951, with The Brotherhood of Railroad Trainmen.

this subject. Section 2 Seventh and Section 6 of RLA (Railway Labor Act) apply only in situations where notices of changes are served by either party on the other in rates, rules or working conditions as covered by agreements. In absence of such notices this Board fails to find any basis for docketing application for mediation filed by the four organizations."

And, in response to an inquiry from the President of The Brotherhood of Locomotive Firemen and Enginemen with respect to said advice of February 10, 1956, the Board, through its Executive Secretary, advised the President of said Brotherhood on February 29, 1956, as follows:

"You state that some question has arisen regarding the authority of this Board to determine whether or not the carrier 'has complied with Article 10(f) of the [fol. 407] Conductors' and Brakemen's Agreement and Article 34 of the Engineers' Agreement by serving notice required under those Articles of change in assignment.'

"Our telegram of February 10, 1956 stated only that the Mediator's investigation of this file indicates that the carrier had complied with those articles by the serving of required notices. The question of proper interpretation or application of those articles to the controversy was not touched upon.

"The National Mediation Board has no power under the Railway Labor Act to interpret the provisions of working agreements nor make any determination regarding compliance or non-compliance with such agreements in any particular situation. Such determinations can, of course, be made only by the National Railway Adjustment Board.

"Our telegram was intended to direct attention to the fact that in the absence of notices served by either party on the other for changes in rates, rules or working conditions, no basis exists under Section 2, Seventh, or Section 6 of the Railway Labor Act on which the application filed by the three organizations could

be docketed. Any questions involving the proper interpretation or application of agreement rules would come under the jurisdiction of the National Railway Adjustment Board."

Neither the railroad companies nor said Brotherhoods or Order, or any of them, have served any notice on the other of any intended change in any agreement affecting rates of pay, rules or working conditions of the railroad companies' engineers, firemen, conductors, brakemen, or switchmen.

The railroad companies therefore request the Board to dismiss this application for want of jurisdiction or, in the alternative and in the event that the Board determines that it has jurisdiction, that the Board find and hold that the railroad companies have not violated any of the provisions of Article 4 of said National Agreement dated May 23, 1952, with The Brotherhood of Locomotive Engineers; that the railroad companies have not violated any of the [fol. 408] provisions of Article 4 of said National Agreement dated May 23, 1952, with The Brotherhood of Locomotive Firemen and Enginemen; and that the provisions of Article 6 of said National Agreement dated May 23, 1952, with The Order of Railway Conductors (now The Order of Railway Conductors and Brakemen) did not constitute an agreement between said railroad companies and Order on October 19, 1958, and that said provisions do not now constitute an agreement between those parties, or, in the alternative, that said railroad companies have not violated any of the provisions of Article 6 of said National Agreement.

Dated December 16, 1958.

Respectfully submitted,

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY,
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS,

By /s/ A. F. WINKEL
Assistant General Manager

[fol. 409] EXHIBITS 1 AND 2

Omitted. Printed side folios 91 and 92, pages 80 and 81, supra. Same as Exhibits 2 and 3 to Affidavit.

[fol. 411] EXHIBIT 3

Omitted. Printed side folio 93, page 82, supra. Same as Exhibit 4 to Affidavit.

[fol. 412] EXHIBIT 4

Omitted. Printed side folio 94, page 83, supra. Same as Exhibit 5 to Affidavit.

[fol. 413] EXHIBIT 5

Omitted. Printed side folio 95, page 84, supra. Same as Exhibit 6 to Affidavit.

[fol. 414] EXHIBIT 6

Omitted. Printed side folio 96, page 85, supra. Same as Exhibit 7 to Affidavit.

[fol. 415] EXHIBIT 7

Omitted. Printed side folio 97, page 86, supra. Same as Exhibit 8 to Affidavit.

[fol. 416] EXHIBIT 8

Omitted. Printed side folio 98, page 87, supra. Same as Exhibit 9 to Affidavit.

[fol. 419] EXHIBIT 9

Omitted. Printed side folio 205, page 148, supra. Same as Exhibit 9 to Exhibit A.

[fol. 420] EXHIBIT 10

Omitted. Printed side folio 206, page 149, supra. Same as Exhibit 10 to Exhibit A.

[fol. 421] EXHIBIT 11

Omitted. Printed side folio 207, page 151, supra. Same as Exhibit 11 to Exhibit A.

[fol. 422] EXHIBIT 12

Omitted. Printed side folio 208, page 153, supra. Same as Exhibit 12 to Exhibit A.

[fol. 423] EXHIBIT 13

Omitted. Printed side folio 209, page 155, supra. Same as Exhibit 13 to Exhibit A.

[fol. 425] EXHIBIT 14

Omitted. Printed side folio 211, page 157, supra. Same as Exhibit 14 to Exhibit A.

[fol. 426] EXHIBIT 15

Omitted. Printed side folio 212, page 159, supra. Same as Exhibit 15 to Exhibit A.

[fol. 427] Clerk's Certificate to foregoing exhibits (omitted in printing).

[fol. 431]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

No. 8061, Civil

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, et al

vs.

THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS, et al.

Transcript of Hearing of November 7, 1958

APPEARANCES:

Mr. O. O. Touchstone, Dallas, Texas, for the plaintiff.
Mr. M. E. Clinton, Denison, Texas, for the plaintiff.
Mr. Hart Willis, Jr., and Mr. Hart Willis, Sr., Dallas, Texas, for the defendants.

Be It Remembered That on the 7th day of November, A.D., 1958, there came on for hearing the above entitled and numbered cause before the Honorable T. Whitfield Davidson, Judge of said Court, sitting without a jury.

Whereupon, both sides announced ready and the following proceedings were had, to-wit:

[fol. 432] COLLOQUY

Mr. Hart Willis, Sr.: If your Honor please, I desire to call your Honor's attention to the fact that this Court does not, nor does any other Court have jurisdiction of a railroad labor matter. The Congress of the United States has taken over that problem and they have placed the original jurisdiction and exclusive jurisdiction within the Railroad Adjustment Board. In this particular instance we have not only that as showing that this Court has no jurisdiction --and by this Court I mean all courts—no court has jurisdiction until action has been had there.

They have done nothing to comply with that provision of the United States Labor Law, with reference to the railroad and these four Brotherhoods whom we represent.

In addition to that, there is a contract which will probably be introduced in evidence showing that the railroad and the four operating Brotherhoods have declared a moratorium which does not cease to exist until January of '59—I mean November of '59.

Now, with that called to your attention, I will ask my law partner, Mr. Hart Willis, Jr., to present our argument and I would like to reserve the right to answer counsel for the railroad after they have completed their argument, as I am sure you will hear both sides.

The Court: All right, your junior partner may proceed.

[fol. 433] Argument on Behalf of Defendants

Mr. Hart Willis, Jr.: May it please the Court, we feel that the issue involved in this case is relatively simple. We are here to resist the extension of the temporary restraining order issued by this honorable court yesterday against the four operating Brotherhoods on the Missouri, Kansas & Texas Railroad.

The Plaintiffs complaint—the complaint of the railroad, we think, from its four corners shows and it is stated in various paragraphs of the complaint that the Defendant Brotherhoods, the Brotherhood of Locomotive Engineers and the other Brotherhoods, the Order of Railroad Conductors and Brakemen and the Brotherhood of Railway Trainmen are the duly constituted collective bargaining agents for the employees of this carrier which operates in interstate commerce and operates under the Federal Railroad Labor Act. The company denominates these Brotherhoods as the representatives of the employees.

Now, in paragraph nine of this complaint by the carrier there are allegations which show that a question or a dispute has arisen involving the interpretation or application of agreements that are pled in this complaint. A dispute between the carrier on the one hand and the collective bargaining agencies, the Brotherhoods, on the

other, within the meaning of Title 45 of the United States Code Annotated, or the Federal Railroad Labor Act.

The purposes of the Federal Railroad Labor Act are stated in Title 45, United States Code Annotated, Section [fol. 434] 151-A, and among those purposes are to provide for the prompt and orderly settlement of disputes concerning rate of pay, rules and working conditions, and to provide for the prompt and orderly settlement of disputes growing out of grievances or out of the interpretation or application of agreements concerning rate of pay, rules and working conditions.

Now, Title 45, Section 153-I, provides the specific applicability of the Act, wherein it is stated that the dispute between an employee, or a group of employees, meaning the Brotherhood and the carrier or carriers, meaning the Plaintiffs in this case, growing out of grievances or the interpretation or application of an agreement concerning rates of pay, rules or working conditions, shall be handled in the usual manner, up to and including the chief operating officer on the carrier designated to handle such disputes, but failing to reach adjustment in that area, the dispute may be referred by both parties or either one to the appropriate division of the Adjustment Board with a full statement of the supporting facts and supporting data bearing on the dispute.

Now, in their complaint the Plaintiff carrier has said in paragraph nine that the Brotherhood has declared that said strike and cease work orders were issued because the Plaintiffs, the carriers, have abolished terminals and changed divisional service on the western sub-division of the southern division of the Plaintiffs' lines of railroad. [fol. 435] I think it would be undisputed that what the carrier has done is to change the terminals as they previously existed from Altus and Woodward, Oklahoma, to Elk City.

Now of course, it is the position of the Brotherhood that the agreement in force with the carrier that should be applied prevents the changing of these home terminals without proper handling through the Federal Railroad Labor Act.

The carrier goes on to say in its petition, and they are speaking here of the conduct of the Brotherhood, they say that the Plaintiffs have abolished established terminals and changed these divisional services contrary to and in violation of one of the Articles of the national agreement dated May 25th, 1951 between the Brotherhood of Railroad Trainmen and representatives of numerous railroad companies, including Plaintiffs'. Also contrary and in violation of the provisions of Article IV of the National Agreement dated May 23rd, 1952 between the Brotherhood of Locomotive Engineers and representatives of numerous railroad companies including the Plaintiff, and contrary to the provisions of another National Agreement in 1952 between the Brotherhood of Locomotive Firemen and Enginemen and the Plaintiff, and in violation of the provision in the National Agreement applicable to the Order of Railroad Conductors and Brakemen.

Then the Plaintiff goes on to complain in their complaint and state that the Article applicable to the Trainmen never became an agreement because they say that an Arti- [fol. 436] cle of that agreement provided that the rules should become effective except on such carriers as may elect to preserve existing rules and practices and they so notified the employees and representatives, and then they go on to say that they did elect to preserve the existing rules and practices and it is their contention that it is in force. But they claim that we say it is in that agreement.

Therefore, we feel that this is strictly a question of applying that agreement, as well as the others.

Then they go on in paragraph "C", page 15 of the complaint, with reference to the National Agreement with the Order of Railroad Conductors and Brakemen, they go on to say that the agreement was cancelled in the year 1954 when the Order and Plaintiffs agreed upon a reprint of the agreement and agreed not to use the provisions of Article VI.

Now we say that the Adjustment Board interprets the applicability and interprets these agreements to see whether or not they apply.

Now they quote specifically from the agreement and say that the agreement of August 1, 1952 is applicable only

in those instances where a carrier desires to establish inter-divisional seniority, district inter-divisional, or inter-district runs in passenger or freight service. That said agreement does not apply to terminals.

That is their language. They say it does not apply to [fol. 437] terminals. We contend it does apply to terminals, so there we have a dispute between the carrier and the union over the application of that agreement. Whether or not these terminals in Altus and Woodward and Elk City, Oklahoma are embodied within these agreements.

The fact that the Brotherhood does contend that the abolition of these terminals will decrease the amount of pay, the constructive wages of these men that they earn on that run, all embraced in these agreements, which have to be determined—have to be determined, we feel, by the Adjustment Board in the first instance, but there the carrier is simply saying they are not applicable. They simply say that the 302 miles of that branch line is a separate seniority district and they are bringing into question seniority, and we feel, under the cases—we will cite the cases later—that this is a matter for the Adjustment Board.

Now, they speak of the agreement with reference to another Brotherhood, Article IV of the Agreement dated May 23rd, 1952. They say that that agreement is applicable only in those instances where a carrier desires to establish inter-divisional seniority districts on inter-divisional runs in passenger and freight service. Then they allege that neither of said agreements apply to terminals and neither of said agreements is applicable on runs on the Plaintiffs' said 302 miles of branch line railroad between Wichita Falls, Texas, and a point in Oklahoma, and then they plead, in the alternative, and say that these agreements [fol. 438] are not applicable to any terminals or runs on the 302 mile branch line railroad, because they claim that under the agreements now in effect the Plaintiffs have had and has the right to change or abolish and establish any terminals on the branch line, and to establish, lengthen or shorten and change any runs on the branch line, and they claim that those agreements and rights were not effected by the August 1st, 1952 Agreement.

And then they plead, in the alternative, that the Agreements of 1952 are not applicable to the 302 miles because the runs being operated on the branch run were established many years prior to August 1st, 1952, the date of the agreements, under agreements between Plaintiffs and Defendant Brotherhoods, and then and now are in effect, and they say said runs were not established under or pursuant to any said agreements of August 1st, 1952.

So the question is what is covered by those agreements, and how are they to be interpreted.

Then they plead again in the alternative that the Plaintiffs, and they allege that the agreements do not apply to any runs—that is, the August 1st, 1952 agreement—do not apply to any runs, or runs being operated on the 302 mile branch line because Plaintiffs only reduced the number of said runs, lengthened the mileage of the remaining runs, and changed some of the terminals for the remaining runs, which is not covered or prohibited by the said agreement of August 2nd, 1952.

[fol. 439] We say, Your Honor, that all of the agreements must be interpreted. We feel that the union, the employees, are protected by those agreements so that they should not be compelled to drive some 50 to 100 miles more from their established homes at their terminals that have been long in existence, and, of course, we claim that the change in the terminal was in violation to these agreements.

Now, Your Honor, we feel that under the cases by the United States Supreme Court, from the allegations of the Plaintiffs' complaint, that until—in this dispute—the carrier, who are the moving parties here—rather, the instigating parties—until they have taken this matter before the National Railroad Adjustment Board, or until they have complied with Section 6 of the Federal Railroad Labor Act by giving notice of intended change in these working agreements, that this honorable court has no jurisdiction here to continue this temporary restraining order, or to hear the complaint.

In the case of Slocum vs. the Delaware Railroad Company, 74 Lawyers' Edition 795, 239 and 70 Supreme Court, 577, the United States Supreme Court had before it the

question of whether State Courts or other courts have power to adjudicate disputes involving interpretation of agreements concerning rate of pay, rules or working conditions when the National Railroad Adjustment Board has not acted.

Now, it was held that such courts do not have such [fol. 440] power as shown at page 799 and 800 of 84 Lawyers' Edition, and the language of the Supreme Court was as follows: "In this case the dispute concerns interpretation of an existing bargaining agreement."

And we say that is exactly what we have here.

"It is error for the New York Court to uphold declaratory judgment interpreting these collective bargaining agreements."

They hold that the jurisdiction of the Board, that is, the National Railroad Adjustment Board to adjust grievances and disputes of the type here involved are exclusive. "This reasoning equally supports a denial of power in any court, State as well as Federal, to invade the jurisdiction conferred on the Adjustment Board by the Act." And that Act, Your Honor, had some other language in it with respect to the Adjustment Board to which I would like to invite the Court's attention.

In discussing the Federal Railway Labor Act, it says that the Court—the Act thus represents a considered effort on the part of Congress to provide effective and desirable administrative remedies for adjustment of railroad employee disputes growing out of the interpretation of existing agreements. The Adjustment Board is well equipped to exercise its congressionally embodied function. Its members understand railroad problems and speak the railroad jargon. Long and varied experience have added to this Board's initial qualifications.

[fol. 441] Then it goes on to discuss the paramount importance of having these chosen representatives of the railroad and union take these matters to the Board. And they say, "We held in a case remarkably similar to the one before us that the Federal District Court, in its equitable discretion, should have rejected adjudication and jurisdiction . . . " and the holding was that the Court

should not have interpreted the contract, but should have left this question for determination by the Adjustment Board, a Congressionally designated agency peculiarly competent in this field.

Then they hold that the jurisdiction of the Board in these matters of interpretations or application of contracts, collective bargaining contracts, such as those alleged by the carrier, is in the exclusive jurisdiction of the Board.

Then, in the Order of Railroad Conductors vs. the Southern Railroad, 94 Lawyers' Edition 811; 339 US 255, 70 Supreme Court, 585—in that case, a dispute arose between certain conductors of the railroad concerning the railroad's obligation under the collective bargaining agreement to give the conductors extra pay for certain services. Now then the Court states that for the reasons set out in the Slocum case, the one previously mentioned, they held that the South Carolina State Court was without power to interpret the terms of the agreement and adjudicate the dispute. They say: "We discuss this case [fol. 442] separately because it sharply points up the conflict that could arise from State Courts intervening in union disputes."

And that reasoning, of course, with reference to State Courts' actions has also, in other cases, been extended to Federal Court action.

" . . . because the Federal Railroad Labor Act, in its avowed purpose to prevent the sort of conditions that we have here, has created the National Railroad Adjustment Board, which the Supreme Court has said is peculiarly competent to act in these labor disputes arising out of interpretation or application of collective bargaining agreements."

From the four corners of the Plaintiffs' petition where they allege that the Unions on the one hand have certain ideas about which agreements are effective, or which agreements are to be applied, which agreements have been violated by the carrier's action, and then going on to allege that those agreements are not applicable, or that they are distinguishable, or that their written terms do not provide for terminals—it would appear most definite that

to resolve this dispute would require interpretation and application of those agreements, and it is respectfully submitted that this honorable court should no longer continue its jurisdiction in this matter; it should dismiss the temporary restraining order and further dismiss this petition for injunction, because the National Railroad Adjustment Board does exist, wherein these Plaintiffs have their [fol. 443] forum, and before which body these Plaintiffs should bring their dispute. They have failed to exhaust their administrative remedy and they have not initiated it in the proper forum.

The Court: In observation, that brings a thought to the Court, when you say they have, in your view, failed to exhaust their administrative remedies.

Before you conclude, you might make reference to that ancient, but now still recognized right of judicial review. If you recognize that then the question will narrow itself down to the question of, should this Court dismiss or abate proceedings here until the Adjustment Board has an opportunity to act.

Now, what do you say about the right of ultimate review by the judiciary in this case?

Mr. Hart Willis, Jr.: Your Honor, the Act itself, by its own terms, provides for enforcement of the awards of the National Railroad Adjustment Board; that any award issued by the Adjustment Board, if the parties do not comply therewith, the action may be brought on those awards within two years in the District Court of the United States of America, setting forth the award and—

The Court: —That is, in itself, in a sense a recognition of the right of judicial review; but your position is that we are not up to it yet.

Mr. Hart Willis, Jr.: That is correct, Your Honor, we feel that actually the cases hold that the State or Federal [fol. 444] Courts are without power to adjudicate the dispute and that to dismiss the cases without holding them in abatement. In other words, if the Court, under the rulings of the Supreme Court and under the provisions of Title 45, Section 151, et seq., particularly Section 153, under those cases, the exclusive jurisdiction—the Supreme Court has phrased it—the exclusive jurisdiction is in the National

Railroad Adjustment Board. And so, therefore, it would be our position that the proper Order in this case would be a dismissal of the complaint—would be a dissolution of the temporary restraining order and a dismissal of the complaint for want of jurisdiction.

The Court: As I follow you, counsel, your first point is that the controversy is not yet ripe for the court?

Mr. Hart Willis, Jr.: That is right.

The Court: And secondly, if the court should think it is ripe, that it is a problem of construing the contract involving this branch line you speak of.

Mr. Hart Willis, Jr.: It is a construction of the contract which is for the National Railroad Adjustment Board, and that would mean that no court would be—it means no court would have the jurisdiction to interpret or apply those agreements.

The Court: Not even if the Board has acted?

Mr. Hart Willis, Jr.: After the Board acts—excuse me—after the Board acted and made its findings, then if either party does not comply, then the jurisdiction of this [fol. 445] court may be invoked by either party bringing it here to enforce the action of the Railroad Adjustment Board.

The Court: I am just trying to state the issues before the Court.

Mr. Hart Willis, Jr.: That's right.

The Court: And I think you and the Court are in accord. In the event that the judge comes to the conclusion that he must first await the Adjustment Board—we haven't come to that conclusion, but I am getting your position—your secondary position will be, if the Court holds jurisdiction, then will arise an interpretation of that contract.

Mr. Hart Willis, Jr.: That's right.

Argument on Behalf of Plaintiffs

Mr. Touchstone: May it please your Honor, my colleague, Mr. Clinton has thoroughly studied the provisions and statutes applicable and I think will be better able to present the carrier's argument to the Court.

The Court: I will hear you.

Mr. Clinton: If Your Honor please, counsel for the Brotherhoods totally misconceives the nature and purpose of this action.

Yesterday morning at 6:00 o'clock, as we had alleged in the complaint which we submitted to Your Honor, the Brotherhood called a strike on our railroad. They tied up 3,000 miles of track, all passenger trains except maybe one or two that could be manned by officer personnel; they [fol. 446] tied up yard operations, they prevented us from serving some 3600 industries strung out on our railroad from St. Louis and Kansas City on the north to Houston, Oklahoma City and San Antonio on the south; they prevented us from handling the United States mail; they prevented us from handling express, and, in accordance with the verified complaint, the allegations of which are admitted by the motion to dismiss, they immediately put us in jeopardy of losing $160,000 a day in revenue, of laying off some 3,200 employees, with the vast amount of money they would earn if permitted to be employed.

They completely paralyzed the railroad in four states.

We asked this Court to grant a temporary restraining order. This is not a hearing on the temporary injunction. We asked that you grant a temporary restraining order to prevent that catastrophe, not only to us, but for the public, the shipping and traveling public, and the United States.

When you saw fit to grant a temporary restraining order yesterday then and then only did these people commence to trickle back to work. And, as of the present time, the full complement of people have not returned, and they will not return if this temporary restraining order is dissolved, but those who have returned will be back out on strike again and we will be paralyzed tomorrow and Sunday like we were yesterday.

Now, this is a suit asking this Court temporarily, until a hearing on an application for temporary injunction—to [fol. 447] prevent those kind of injuries. This is not a suit asking this Court to construe any contracts or perform any function which is performed normally by the Adjustment Board; nor the National Mediation Board. The cases are uniform that strikes may be enjoined, that people will not be permitted to paralyze transportation and industries

in that fashion when they, themselves, have a remedy which they can follow.

If this company has violated any agreements, which we deny, these people have their own remedy, which he admits, they can file their claims with us and say, "You owe us, you prevented so many people from performing certain services by the unlawful changes you made," and they can say, "And we now elect to file with you a demand for monetary payment of the amount that these people would have earned if you had not done that which you did."

In the filing of such a claim we would, of course, have to consider and discuss with them whether or not it is valid or invalid, and if we denied those claims they could send them to the Adjustment Board, as they have done in many other cases. They could have done just exactly what the Court held in the New York Central case, the Brotherhood of Railroad Trainmen vs. The New York Central, 246 F.2d 114, Certiorari denied by the Supreme Court of the United States, in 3 Lawyers' Edition—second Edition, 107, 355 United States 877, Decision in 1957, in the Circuit Court, with denial of Certiorari.

[fol. 448] In that case the employees of the New York Central Railroad were contending that the New York Central was violating agreements with their organization; that they had no right to close a yard, a terminal, and transfer the work to another terminal, which would result in men losing jobs and result in the reallocation of work. They struck there but before they did it they did try to get the Mediation Board to enter into the dispute. They said the railroad was trying to close the yard in violation of agreements, and throw people out of work; that the railroad, in effect, was not complying, just as now, with Section VI of the Railroad Labor Act; that the railroad ought to come in and ask for a new contract under Section VI, and the Mediation Board did look into that question, just like they have looked into this question on the application of these people, and they found there was no agreement existing between the railroad and the Brotherhood which prevented the railroad from doing what they proposed to do; and that in the absence of an agreement the railroad company, in the exercise of its best judgment, had a right to make the

change, from a standpoint of economics, and close that yard and transfer the work to other yards even though it might result in some loss of employment.

They went further and said that the organizations had not asked for any agreement there to prohibit the railroad from doing that, and they haven't asked for any agreement [fol. 449] to prohibit us from doing what we did. They said there that the Mediation Board, in the absence of a request for change in rules in accordance with Section VI of the Railroad Labor Act, could not proceed because it was not a matter for mediation. In that case, Your Honor, the organizations gave 72 hours' of notice of strike and they gave it to the Mediation Board. And that, as I understand, has been more or less customary, until it happened to us. They notified the Mediation Board the strike would be called 72 hours later, and the Mediation Board tried to see what they could iron out with regard to the controversy and they found they could not iron it out and they closed their file and so notified the parties.

The strike date was re-set and the railroad then brought the suit to enjoin the strike, which would bring about the same disaster to them as it would bring about to us. And they said that the Court does have that right and should exercise that right to prevent a strike tying up their transportation system when these people, themselves, could initiate and take to the Adjustment Board claims which may result from the closing of that yard.

And they said the time for the Adjustment Board to come into this picture is not in connection with the closing of the yard, any more than in connection with out here where we are changing terminals or runs, but when the actions of the carrier does result in monetary losses then [fol. 450] these claims could be presented to the company, and if denied, to the Adjustment Board; and that until that time came the Court properly should and did enjoin the strike. That is the last case on the subject that I know of, and it was decided by the United States Court of Appeals for the Sixth Circuit. They said there that the Court should act and did act, and, as I said, the Supreme Court denied certiorari. That is the essence of it.

These cases that he cites, they do not touch topside or bottom of the issue here. There is no strike involved there in any one of them. And it was a question of whether an admitted contract permitted this group or that group to do the work. It involved something that the public was not even interested in. No strike of any kind is involved in any of those cases.

Now, this complaint, Your Honor, verified, states that these changes we made on the division were made in accordance with agreements in existence long prior to 1952, the date on which we said we made other agreements. It alleges that we had this specific authority under agreements to do what we did, and we do have that right, and it is not even denied. It is admitted by the motion to dismiss. They would have you believe the agreements which we have had in effect for 25 or 30 years permitting us to do something is automatically overridden and dispensed with by some other agreement, and with respect to that agreement, in two instances—no such agreement anyhow. You have got the national organizations, you have got the Brotherhood of [fol. 451] Locomotive Engineers and the Brotherhood of Locomotive Enginemen and Firemen and the Brotherhood of Railroad Trainmen and the Order of Railroad Conductors and Trainmen.

Now, this agreement they are talking about in 1952, we don't even have such an agreement with them, and how could that agreement be the basis for any strike action so far as they and their organization is concerned? I refer to the Brotherhood of Railroad Trainmen and the Order of Railroad Conductors and Brakemen. It is undisputed that it never became an agreement as far as the Brotherhood of Railway Trainmen is concerned. There is some question as to whether or not the so-called National Agreement—that is what they call them because they negotiate on behalf of the railroads, who later adopt them—and we did not see fit to adopt the National Agreement in that case, and it never became an agreement on this railroad, and it could not be the basis of a strike action. It never existed. As far as the Order of Railroad Conductors and Brakemen is concerned, we admit in our verified complaint that it did become an agreement in 1952, but when that agreement was

revised in 1955, when the parties sat down together, it was written out of the agreement, and no longer exists.

We do admit they have that particular agreement, with the other two organizations, but that is not the answer to the question. The question is, they contend that that agreement provides, in effect, that we will not do what we had the [fol. 452] right to do under existing agreements, which are still in existence, because we said that before, we did that particular thing we would come and ask your permission to do it and tell you what we proposed to do and negotiate about it, and if we couldn't negotiate they would take it to the Mediation Board and if we couldn't get it mediated, we would take it on up. But those agreements say that when a carrier desires to establish certain types of runs they will do these things.

These runs have been established out there for 40 years.

The type service they are complaining about has been there all the time under the original agreement and these 1952 agreements were never intended to apply to runs which had already been established and were established at the time the agreements themselves were made in 1952.

They related to situations on other railroads, and also other points on the railroad where no service of that character was in existence, where the carrier desired to establish service which does not exist. In that event certain procedures were to be followed, and not where you have got the service and have had it for 40 years and all you want to do is re-arrange a run, maybe extend it a few miles, which you have the right to do under other agreements.

And these courts also say that these companies must be permitted, if they are going to function properly and serve [fol. 453] this country properly, to cut off unnecessary expenditures when they have the right to do it under existing agreements.

There is no basis of any character for the complaints they make, no basis of any character for the strike action they took, and if this temporary restraining order is not extended, we will be faced with complete paralysis tomorrow.

Mr. Hart Willis, Sr.: If Your Honor please, this gentleman speaks of their situation. They brought it on themselves. We tried to negotiate with the railroad since the

inception of these things and they absolutely refuse to negotiate. No longer ago than yesterday afternoon all of the representatives of the Brotherhood sat in our law office and we talked to these men and said, "We will call this strike off if we have to. Go talk to your executives and see if you won't sit down across the table and negotiate with us."

They 'phoned back at 2:30 yesterday afternoon and said, "We have nothing to negotiate about." I think that is a most high-handed procedure if I ever heard of it. My friend has evidently forgotten how to read. He explained the New York Central case. If he knew how to read he would find that neither a contract nor a labor dispute is involved in that case, but then he says the contract must be interpreted. He speaks out of one side of his mouth when he wants the Court to maintain this thing, and out of the other side when he tells the Court about what the situation is.

[fol. 454] If Your Honor please, we challenge them now—we are glad to go into mediation with them at any time from now on. We will still do it. We started to go into mediation but they will not do it.

If you boys want to go into mediation, we are ready now and the mediators are in town. They sit back and say, "We are taking from your men up there their homes—" everyone of them have got their homes and have had them for 40 years, taking their houses away from them and moving them just like they did from St. Louis when they had the move to Denison.

If Your Honor please, there has been ten cases, ten cases where this same thing has arisen and every time the Railroad Adjustment Board has decided in favor of the Brotherhoods, and they would know that if they could only read. So they come before this Court and ask you to decide this matter when you have no jurisdiction, no more jurisdiction than I have, and I haven't any.

I tell you right now, put you on notice, we will strike and we will strike every time, if these people take my advice, if you don't sit down and negotiate with us. And you can put that in your pipe and smoke it. I have no authority to bind them, I am simply a lawyer and have been for 30 years, been their lawyer, and I have found them to be

gentlemen. But these people say they will not negotiate. They say, "We have nothing to negotiate."

[fol. 455] If Your Honor please, it is in your hands. Having known you longer years than I know what to do with, I know you are going to make the decision you think should be made. But if you have the power, I would ask you to make them negotiate, or go into mediation. We want it to be dismissed, but you can make the suggestion about the negotiation. I don't think there is any question about the cases. You must know the case should be dismissed.

Mr. Clinton: Could I reply to one thing?

The Court: Ordinarily the movant has the conclusion, but if you want to call the Court's attention to one matter, we will hear you.

Mr. Clinton: On all the conversation about negotiating, during the meeting he spoke about, I said, "What do you mean about negotiating? You mean that you want us to admit these 1952 agreements which we say have no application in this controversy requires us to negotiate something which we have the right to do under the contracts?" And they said, "Yes, that is our position."

Of course, we cannot admit that. We have a duly negotiated contract agreement which we say doesn't even apply in the first instance.

Mr. Hart Willis, Sr.: If the Court please, I want to say this—

The Court: —Let the Court talk some.

Mr. Hart Willis, Sr.: I just was going to say that we [fol. 456] have asked to negotiate and we are willing to negotiate at any time, right now, or any time. We would negotiate any differences between us and not confine it to the contract, if necessary.

STATEMENT BY THE COURT

The Court: Gentlemen, you have got a very important question here. It has within its bounds explosive elements that can do vast injury to many people not concerned. And so, before we go to the exercise of force, which would be a judgment of the Court that can be enforced, or a judgment of the Railroad Adjustment Board that would settle matter, or to the ultimate outcome of the strike—

you are here before the Court. You are here against each other. We might reason together a moment.

Let's consider for a moment first, if I were to ask how many of you were opposed to war as a means of settling a controversy, I think 95 per cent of you would agree that it was an undesirable thing. War is what old General Sherman said it was. War is the shedding of blood and the destruction of lives and property and possibly civilization. You will agree with me about that.

A strike is a type of warfare. A strike says to one man, "If you don't agree with our position, we will put you into bankruptcy and put you out of business." The business says, "Crack your whip and we will put you out of a job and you and your family will face hunger." I have seen those things and seen men suffer that way. Men that were right close to me.

I well remember the strike of the T & P Railroad. I was [fol. 457] a young lawyer practicing law at Marshall. Those boys, those strikers were striking by reason, of course, of the fact that their superiors and representatives decided the strike was in order. They were my clients. They were my friends and they were my neighbors. They would hold a mass meeting every morning and they would invite somebody to come and talk to them. My old law partner would lecture them one morning and then they would send for me and I would lecture them occasionally, and they would send for others from all about to come and lecture and talk to them and give them confidence in their position.

The strike went on. My old friend was on the other side and he and other men of that type felt that in a sense they were being persecuted, but the strike went on. Finally, when it came to a conclusion those men whom I loved and who were close to me—I can name a number of them—Walter Roberts, and this man here, and that man there—they wound up moving away and losing their homes in Marshall.

Some of them went to Little Rock and some to Fort Worth and some moved to distant places. And the City of Marshall and other places on the railroad lost heavily by reason of it all.

It is one of those warfares in which both sides lose.

I have noticed it in other matters. I remember the Katy strike which was so disastrous. I remember others in other industries. One in a steel plant at Daingerfield. I remember [fol. 458] a man that lived down next to my farm, and that farm has gotten into this case, unfortunately.

And let me, by digression, since you are here, tell you just a word in parenthesis about my philosophy of life, of which this farm is a part. There is an old saying that a noble character lies close to nature. I don't know how much nobility or character I have, but I want to get as much as I can by getting close to nature. So I have a place over there with trees and holly branches and I go over there occasionally, and I have a dog that thinks he can talk to me. And, at his best, he has got good sense. And occasionally you will see a cow among the herd that seems to be able to reason. And it is interesting to watch their movements and their conduct. And you can sit under a great tree and watch the squirrels play and hear the birds sing and the bob-whites whistle and then you can get your hook and go out there in mid-afternoon and maybe catch a string of fish.

And when that is all over you feel fit. I had two days of it last week and I am here before you feeling as fit and as well as any day I can name for the last many years.

Mr. Hart Willis, Sr.: Don't say how many, Judge.

The Court: I will not call a number, but I can't even count back to my childhood and think of a day that I felt better or freer from pain than I do today. And that was made possible by having a place, a good place and a tele- [fol. 459] phone runs by, but I won't get on the line down there. Because some of these good boys get so interested in a lawsuit they will call me down there and want me to set a lawsuit for a certain day, and maybe another man would already have a lawsuit set. So the only day to set that lawsuit is the day after I get back here.

But now, in order to keep some fellow from feeling that this judge is loafing on the job, I might re-hash some of these things. The judges in the District have two and a half times as much work as the ordinary judge in America. In order to carry on, I have given Judge Estes, who has been working two years without spending a night at home

because Fort Worth was his headquarters, and he goes to Abilene and San Angelo—I agreed to give him the jury civil docket in Dallas with its hundreds of cases. I have kept the non-jury and I am hearing this case on that docket. I have kept the criminal docket and the bankruptcy docket. You heard me handle a criminal case a moment ago.

So I have those three dockets here and then I went over and took the whole docket in Fort Worth, which is no small village any more. They fight over there, too. So I have my hands full. I have this matter and another one here today and tomorrow I have a lawsuit here bringing lawyers in from the four corners of Texas that I will have to hear. So in order to hear all those cases, it is very well to have the judge feeling well and in a good humor.

You know it is very important for the judge, in every [fol. 460] case he tries—you know the judge may have some enmity. I try hard not to have them, but once in a-while you will have one temporarily anyway, but the judge should never be swayed by enmity, and for the same reason, should not be swayed by his friends. He should see but one thing, justice between the controverted parties.

I think there was a great statement by a great philosopher and student of human reason and human relationship, a great statesman that made a true statement of it. My father never liked him and of course, if I would tell you who he was, you would see why, his name was Abraham Lincoln, and, incidentally, my father surrendered at Appomattox. But Lincoln said, "I am bound to go with those who are right, and I am bound to leave them when they go wrong."

And that gets us back to this case. If we can avoid a strike, if we can avoid an industrial or commercial warfare, we will do a great service and the representatives—and the management, through counsel on one side, and the representatives of the labor group on the other side, have a grave responsibility before them, and that responsibility ought to be considered even over the other questions.

If an adjustment can be reached among themselves it would serve a great purpose.

Just as I said, a strike is like a blood-shedding war. Think of that very war I just mentioned, where my father

[fol. 461] surrendered at Appomattox. One of his brothers out yonder dead, for whom I was named. Think of the strike of that great war and think of the thousands of men slaughtered. How easily it would have been avoided, might have been avoided. England—and I don't think our English cousins have anything on us when it comes to common sense—England freed her slaves without a war and old England was guilty of selling most of them over here, selling them to us. But England freed her slaves without a war, and Czarist Russia freed its slaves. Of course, they have got a lot more in their place maybe, but the feudal slaves were freed without war.

The Emperor of Brazil, and Brazil was an empire at the time—they freed their slaves without war. If those nations could abolish slavery without war, the United States should have been able to do so.

I would say ten per cent of our people dragged 90 per cent into that terrible holocaust. The controversy went on for 20 years and finally came a fellow by the name of John Brown who had gone crazy on the subject and he conceived the idea of seizing an armory and arming the colored people, the slaves, in order that they could slaughter and massacre the whites. That sounds like something you don't believe, but the men living at that time could well remember when the white men of another neighboring nation were massacred to a man. That was the nation of Haiti. They were slaughtered by former slaves and not one of them was [fol. 462] left.

Now, if this crazy man, who was executed by the law, had not seized that fort and offered those arms to the colored people, the war perhaps would not have been. But unthinking people, among them even preachers, I am sorry to say, hailed his act as a fine gesture in the right direction. And of course, that was just like waving a red flag at a bull, and the south said they were going to get a divorce. Said, "We won't live with you in the same house,".

Now, if that war might have been avoided, if they had sat down and reasoned together, think how much it could have saved. Francis Scott Key and others had an idea of how it might have been done, but the blood was too hot to listen to those men who laid the burden before them.

We fought and we lost. Both sides lost, as they always do.

But this comes closer to home. Take World War I, it started because of the murder of one man. When the Prince of Austria was murdered down in the neighboring country of Serbia what is now part of Serbia the Emperor of Austria said, "We are taking over," and massed his armies. And that resulted in the shooting, and the letting of blood. And when that started the Czar of Russia said, "No," and he put his soldiers in line and said, "We will fight." When he said that, Germany said "You are already in. I will enter on the other side." And then John Bull got in and John Bull reached over and got us in, and looking back I think we [fol. 463] would have done well not to have let John Bull interfere with us.

But, at any rate, if five men had gotten together and discussed that in a commonsense way, the King of England, the President of France, the Kaiser of Germany and Austria and the Czar of Russia—six men, if they had gotten together, they could have reached a commonsense agreement and demanded of Serbia that that country surrender the murderer of this Prince. So he could be punished, and apologize—that would have been much better than fighting World War I. If it could have been so settled. But they were not in the settling state of mind.

Now, I think most of these strikes could have been settled. Just think, sometimes, maybe when you are striking the fellow can't give you what you want. You can't get milk from a dry cow. You might think about those things, and he may be a dry cow and the man won't admit it. And there may be qeustions that ought to be discussed in your private conferences and concessions that maybe can be made before you throw all the men out. There will be some of them like those neighbors of mine that will be looking for work and asking for help, and you will be giving them jobs because you need to have the work done, and you would feel sorry for them.

Labor now, has the trump card, in a way, because we have been drifting that way.

When I was in the Lieutenant Governor's office, as Mr. [fol. 464] Senior Hart Willis knows, the Brotherhood of Railroad Trainmen and the Engineers made my office, the

Lieutenant Governor's office, their headquarters there with reference to most of their bills that they wanted to present to the Legislature, or wanted presented to the Legislature for them. Our relationship was close. But we have got to bear in mind that remark that Lincoln made. It is, after all, a question of who is right, and sometimes not only is it a question of who is right, but it is a question of ability to perform.

Suppose you have a bankrupt here, and a case comes before our Referee in Bankruptcy around here, who is a good lawyer and a good judge, and after all the cards are on the table, he only has enough—the bankrupt only has enough property to pay sixty per cent on the dollar. Some fellow finds out about that and says, "He has got my money and I want him to go through bankruptcy," and yet he knows that if he goes through bankruptcy he won't get but twenty per cent on the dollar. The other fellow says, "No, I can re-organize this concern and I see a way to make it pay out and pay at least eighty per cent on the dollar." And those men sit down and ordinarily discuss those things.

You know, I want to suggest this thought. This hasn't been mentioned here and I can see why these men are not in a position to mention it yet. And that is the picture of the railroads.

These lawyers came down to my farm here and I was [fol. 465] having a good sleep and they waked me up and kept me awake about two hours and then I went back to bed and I didn't any more than get in bed after another rap came on my door and there was a Negro man about 65 years old that wanted a pension and thought I could give him a birth certificate, so I didn't get any sleep at all except the hours I got before the lawyers came.

And I came on home and I had told my court crier to meet me down at Wills Point 50 miles out and I got there before he did, and pulled up to the red light and I got to watching the traffic and then I got to watching the highway at the red light and in 30 minutes, that one period, I saw three heavy loads of freight, great loads of lumber, cows, feed, pass under the red light, some going one way and another the other way. Great loads of vegetables and maybe

some wheat going the other way. And another great load of cattle.

I sat there by that red light 30 minutes and I saw more freight pass through that red light than passed on the one train that went by while I was there. I expect I saw 30 heavy loaded trucks carrying thousands and thousands of tons pass under that red light in a very few minutes.

I will not say what effect that would have, but when that railroad was built they thought they were building it to haul that freight. And when you and I and the rest of us built that paved road, we didn't fully take into consideration [fol. 466] that we were going to take all that freight off of that railroad and put it in trucks, but that is what happened. Just like when these fellows built the railroad, they, or somebody, took over the steamships, took them off of the Mississippi River. And few people thought about the Robert E. Lee and all those ships with the various names that used to ply the Mississippi would go, but only one of them is left and it don't do anything but haul tourists back and forth, and sightseers.

And the railroads can't stay in business and they can't meet payrolls unless they get money and if somebody else does all the business they are not going to get the money. You can go down to the Union Station down there and count what you will see there, and then go out here to the airport and count the automobiles you see out there, and then you get in your mind the consciousness of the fact that the railroads may soon be a Mississippi River, that is possible. Only the great trunk lines may be able to survive and all the little feed lines drop off like dead limbs.

So we all have problems and decisions to make, and we have to sit down and talk them over.

Now then, having discussed the responsibilities, suppose we have this question. I am a friend of you lawyers. As I said, I was in the Lieutenant Governor's office when Hart Willis was a senator and when I was in the campaign for Governor Oscar Touchstone was one of my main sup- [fol. 467] porters, and I know you both. And I suggest that instead of trying to tear each other up that you give each other the benefit of your wisdom and see if something can't be worked out in this thing.

Now, getting back to the legal side of it, and, Mr. Willis you made a very forceful presentation of his side of the case, the younger member of the firm, I asked him about the right of judicial review. I don't know what good this court may do you, or what good the Adjustment Board may do, but you have got to give a chance. If you go on a general strike, you won't give either of them a chance.

I know of no greater service I can perform you, as a Judge, than to keep you from cutting each other's throat, which you are just about to do right here and now.

When the Constitution of the United States was written some wise men over the land said, "Here, you haven't put enough in it." They said, "We want a Bill of Rights." So, Roger Williams and his followers there wrote out a Bill of Rights. Virginia, and the followers of George Washington wrote out a Bill of Rights. North Carolina wrote out a Bill of Rights, and they had more items than did Virginia in hers. And North Carolina had one item that I am going to mention, because I am going to show it where it went in the Constitution.

North Carolina had in its Bill of Rights number 12, that no man should ever have a wrong unless a forum is provided where that wrong may be righted. That is item 12 of [fol. 468] the North Carolina Bill of Rights. You say that one was left out of the Bill of Rights? No, it is in there now. Because the Bill of Rights, examined in the light of the Constitution, contains this provision, that life, liberty and property is placed in the hands of somebody. In whose hands? Not in the executives' hands. Not in the legislative hands, but in the hands of the judiciary. And there it is made to rest, and item 12 of the North Carolina Bill of Rights was thereby merged into the Bill of Rights, and the Constitution of the United States. Because when the judiciary of the land, from the trial court to the court of last resort, has your life, your liberty and your property in hand, it has everything that item 12 of the North Carolina Bill of Rights had provided.

Where there is a wrong, there is a remedy.

Now in order to facilitate the righting of wrongs, this Board of Adjustment has been created, but it has not been created to abolish the judiciary or its powers, and that has

been recognized on down to the present, so that if one of these administrative bodies should go so far wrong as to trample on man's rights in the light of the Constitution then that right of review still exists. We get back down to our privileges and our procedures that have always existed.

For instance, if you probate a will in the Probate Court, the right of review is in the District Court. That has been true all this time. And if you create one of these Boards [fol. 469] and it has charge of these various matters, the judiciary must leave it alone until that Board acts.

Now, this Court is going to suggest this to you. I need a little time to study whether or not the Court has jurisdiction, but I have got a big case here tomorrow, I have got to go to Fort Worth, and I have got 20 or 30 big cases set for trial there, and I have got to do those things. I have got to handle them all as far as life is within me, and I am going to ask the cooperation of these lawyers. I am going to ask you not to send me 100 pages in your brief, because I won't be able to read it. But put on a piece of paper the authorities that you think sustains your position and then write me not over three pages and tell me where I can read these authorities.

Then I am going to tell you to do something else, and that is to endeavor to get your clients to stop this catastrophe, this destruction that could follow a strike in this case.

You might, if you can't get to any other point, and your people will not agree, you might agree, stating to them, that this case should abate right here, right where it is, without it being dismissed, until you can get an opinion from the Board of Adjustment, and if you can't get that—when you get that opinion and you haven't gone any further, I think the rights of judicial review will come back to this Court, and that that Board is charged primarily with stopping the controversy that will grow out of this. [fol. 470] This Court is charged with doing it, and no greater service can be rendered mankind than to stop a warfare of this type.

When I was younger I used to think all railroads were owned by Jay Gould and Vanderbilt and a few others. But

I expect there are 50 stockholders, some of them wage earners that will be affected by this decision, and they are standing in the shoes of Jay Gould and Harriman, where they used to stand. They will be injured by this, but not as much as those men who have jobs who will have to stand idle for months without employment, and they begin to look around and leave the job and go to other places and then when the railroad sees fit to try to start again they will have to find the right kind of men to fill those shoes and that might be hard to do.

All of that can be avoided by a little justice and a little commonsense and you should exercise it.

Now, if you don't exercise it next Saturday I am going to run away from Fort Worth and come back here and reopen this trial. I hope you will tell me you have found a common ground and I hope you will have to me by the middle of the week, that three page letter that will contain your authorities, because you are officers of the Court.

That is what I told the young lady a-while ago. You are officers of the Court. You officers hand me the authorities that you rely on by Wednesday night and I will sit [fol. 471] up after supper and read it and try to be in a better position to pass on this case next Saturday.

But, in the meantime, I hope you will tell me that we haven't got any case.

So this case will now be recessed.

Mr. Touchstone: If the Court please, I call the Court's attention, if the restraining order is not extended—

The Court: —This matter will stand where it is until Saturday.

Mr. Hart Wills, Sr.: If Your Honor please, you don't need to make an order. I give you my word, as attorney for the Brotherhoods, we are not going to have a strike until the Court passes on it.

The Court: I appreciate that, but it might be a good idea to have an Order, so I will sign one.

Mr. Hart Willis, Sr.: Yes, sir. All right, thank you.

(Whereupon court was adjourned)

[fol. 472] Reporter's Certificate to foregoing transcript (omitted in printing).

[fol. 473] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION
No. 8061—Civil

[Title omitted]

Transcript of Hearing of December 18, 1958

Be It Remembered that on the 18th day of December, A.D. 1958, before the Honorable T. Whitfield Davidson, United States District Judge, the following proceedings were had in the above styled and numbered cause.

APPEARANCES:

O. O. Touchstone, Dallas, Texas, and M. E. Clinton, Dallas, Texas, Appearing for the Plaintiff;
Goldberg, Fonville, Gump & Strauss, Dallas, Texas, By Mr. Fonville, and Willis & Willis, Dallas, Texas, By Mr. Willis, Appearing for the Defendant.

[fol. 474]

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: Gentlemen, we have before us Cause No. 8061, styled Missouri, Kansas and Texas Railroad Company et al versus The Brotherhood of Locomotive Engineers, et al.

We have had a hearing on this before, a very short hearing. It was the hope of the Court at that time that a voluntary adjustment would be made and could be reached. It would seem from the matter now before us that that has failed, and the Court regrets that very much.

At no time should a valid contract between individuals, or between individuals and corporation, or between groups or unions and corporations be lightly treated or set aside; on the other hand, to turn loose a strike at this time, to put 1,500 people out of work, and affect the operation and

the public is a serious matter, so we do have something serious to consider here.

Now, we have other matters set for tomorrow. I don't know how extensive this hearing is to be, but I would like for counsel to give the court a general survey of what will be presented for consideration at this time, and how much time will be consumed in it.

Mr. Willis: We also have a motion challenging the jurisdiction to enter this injunction. We have a motion to dissolve it, and Mr. Bill Fonville is associated with us in [fol. 475] this case and he will conduct the case.

What we have is this: We are of the opinion that this is purely a law matter for the Court's Determination, but in the event the Court needs testimony we have all these officials of our Brotherhood, four of them, sitting here, and we can put them on the stand to testify with reference to what has happened, and what they conceive to be the facts in this case, and with that understanding we are ready.

Now, I assume that the motion to dismiss will have precedence over their application for a show cause order, but that is a matter that the Court will consider, I am sure.

The Court: The motion to dismiss involves jurisdiction, so I think it should be disposed of first.

I will hear from the plaintiff.

STATEMENT ON BEHALF OF PLAINTIFFS BY MR. CLINTON

Mr. Clinton: We have prepared an affidavit of A. F. Winkel, Assistant General Manager of the two railroad company plaintiffs, which we have filed and will offer in evidence, which states, we think, succinctly, the facts which should be presented to the Court.

We also have ten different submissions which the companies have made to various agencies since the other hearing.

The organizations, in their answer, contend that the railroad companies have violated certain specified provisions of their working agreements with the organizations, and [fol. 476] we have submitted the question of the violation,

if any, which we deny, of course, to the National Railroad Adjustment Board for a decision and our submission to that board is now pending before the board, and a copy of that submission is attached to an amendment to our answer, and the motion for leave to amend, which is on file.

In addition to claiming we have violated the provisions of working agreements, which clearly is a matter for the National Railroad Adjustment Board, in our opinion, the organizations contend we have violated the provisions of four other agreements, generally called moratorium agreements, and we, likewise, have submitted that issue to the Railroad Adjustment Board.

The organizations also contend we have violated the provisions of three other agreements, generally referred to as national agreements, one in the fall of 1956 and two in the early part of 1957, and we have incorporated that complaint in our submission to the Railroad Adjustment Board.

So, as of the present time there is now pending before that board this entire controversy for decision.

In addition to that, in these four agreements, generally called moratorium agreements, there is set up by those agreements a special committee which is commonly referred to as a disputes committee, and we have submitted to that committee the question as to whether or not we have [fol. 477] violated the moratorium agreements, and that dispute is now pending before that committee.

Likewise, in the 1956 and 1957 agreements there is another committee set up to decide whether or not the provisions of those agreements have been violated.

The Court: Those are called for in your contract?

Mr. Clinton: They are called special national agreements, except one, which is a collateral issue here.

We have submitted to that disputes committee the question of whether or not we have violated those agreements.

In addition to that, because of the provision in Section 5, Paragraph 2, of the Railway Labor Act, which provides, in effect, that if there is a dispute between the parties as to the meaning or interpretation of any agreement reached in mediation, that either party, or both parties, may submit the matter to the National Mediation Board, we have

also submitted to the National Mediation Board the question of whether or not we have violated the moratorium provisions of that one set of agreements, or whether we have violated the provisions of the other national agreements. So the entire controversy is before the National Railroad Adjustment Board, a part of the controversy is before one disputes committee, another part before the other, and two parts before the National Mediation Board. [fol. 478] So we think we have, since we were here before, submitted this thing to every possible agency that might pass upon it.

We do have some reservations of jurisdiction, but, nevertheless, it is a matter for those agencies to decide.

The Court: What division of the Adjustment Board will pass upon this?

Mr. Clinton: The first division in Chicago.

The Court: What hope do you have of getting an early report from them?

Mr. Clinton: We can't say precisely; I could make inquiry to find out what their procedure is. I don't know right offhand what that might be, but we feel like that even though we are entitled to a temporary injunction on the basis of the Toledo case, which we recited to the Court before, and to the court in brief, that nevertheless, and in addition to that, the present status of it is such that we are clearly entitled to a temporary injunction under the Chicago Junction case, which we cited to the court, by the Supreme Court of the United States, and that case holds that where a dispute is pending before the National Railroad Adjustment Board that the court does have power and jurisdiction to issue an injunction against a strike, and we think the same rule applies to the jurisdiction of the National Mediation Board and the committees set up by those agreements.

[fol. 479] If your Honor wishes to hear testimony we will be glad to put Mr. Winkel on the stand, but we have his affidavit in clear form.

The Court: I might ask you this: The pleading is voluminous, and I am not sure whether the pleading raises the question as to whether this might be grouped as a major or a minor strike.

Of coure, a major strike would be involved if it was seeking to set aside the contract itself, or to write a new contract.

Where it pertains, as I said before, to some specific or local or special part it may be treated as a minor question, and the two questions seemingly go in a different course.

Will there be evidence offered, or will there be a contention that this is a minor or major question?

Mr. Clinton: I think clearly it is minor, because it involves the interpretation of agreements which have already been made, and they are alleging we violated the agreements already in existence. The allegation is that we have violated the working agreements with the organizations which have been in effect since 1918, and that is a minor dispute under the National Railway Labor Act.

The contention is also made we are violating the moratorium provisions, and whether we are violating those or [fol. 480] not calls for an interpretation of agreements that is for the board.

Likewise, they say we have violated other agreements in that we changed service without negotiations. That is nothing but determining whether we violated the agreements themselves, and you have to take into consideration the terms of the other agreements to determine that question, and that is for the Adjustment Board.

The Court: Outside of the contract, does the controversy affect the personnel of the entire service of the railroad, or just those on this branch line?

Mr. Clinton: The contract itself would affect the operation between Wichita Falls, Texas, and Forgan, Oklahoma, because that is where the particular service involved in this controversy lies, but the entire railroad is involved in the strike, and all of its train service employees.

The Court: Getting back to the origin of the strike—I will pass that for a moment—the Court is not entirely clear whether or not any changes had been made in the personnel or operation of the road that brought on the strike, or whether the strike was apparent and threatened at the time of the temporary restraining order. In other words, are both parties going ahead as they were the day before the strike started?

Mr. Clinton: In this part of the road—

[fol. 481] The Court: What I want is, is there any emergency that is to the injury of either party during this hearing?

Mr. Clinton: If the temporary injunction is not issued, the temporary restraining order—

The Court: No, I don't think I make myself clear to you. In other words, do you have people now, who, by reason of this intended change in the yards and so forth, and these division points, do you have people out of employment and threatened to be out of employment, or is everybody working and holding their jobs as they did before the question of a strike started?

Mr. Clinton: Before the strike started the changes were made in the operation out there. It may possibly have caused some men to go on the extra board who were working; I am not sure about that, but the strike was then called following the change which was made.

Of course, we contend we made this change in accordance with the express provisions of our agreement, which is also in dispute here.

The Court: What I was trying to find out, whether there was a group of men out there who was out of employment, who are awaiting the disposition of this controversy?

Mr. Fonville: There are ten.

Mr. Clinton: Our Assistant General Manager says no.

Mr. Fonville: And the union says ten.

[fol. 482] The Court: We will turn to the motion to dismiss, and before I take that up I might ask counsel if the motion to dismiss will call for the taking or the hearing of testimony, or will it be on the pleading?

Mr. Fonville: If the Court please, let me go back a bit. The motion to dismiss, originally filed, was filed on short order because of the urgency in the fact that a temporary restraining order had been granted ex parte.

Now, since then we have been served with an amended complaint, the complaint amended once, and on yesterday a complaint amended a second time. The amendments are accompanied by motions to the court to grant the plaintiffs leave to amend, to which I have no objection.

Has the order allowing the amendment been entered?

Mr. Touchstone: I was going to present them to the court. I will give it to the clerk.

The Court: All right. Proceed.

MOTION TO DISMISS THE COMPLAINT AND THE DISSOLUTION OF THE TEMPORARY RESTRAINING ORDER, ETC.

Mr. Fonville: The amendments have now been allowed. I will address an oral motion to dismiss to the complaint as amended.

I move to dismiss the complaint and the dissolution of the temporary restraining order in this cause on the ground that this court lacks jurisdiction of the case.

We think the question in controversy does not arise under the Constitution or any law or treaty of the United [fol. 483] States.

We further move to dismiss the complaint herein as amended, and the dissolution of the temporary restraining order presently in effect, for the reason that by virtue of the provisions of the Norris-La Guardia Act this court has no jurisdiction to issue an injunction in this case, for the reason that the plaintiffs have violated their obligations; have violated their agreements; have not maintained the status quo, and do not qualify for an injunction under the Norris-La Guardia Act.

The Court: Wouldn't that raise an issue of fact?

Mr. Fonville: I contend so, and that is perfectly apparent from the complaint itself; otherwise, we would have to try it on the merits.

We further move to dismiss the complaint and the temporary restraining order entered herein for the reasons the evidence fails to state a claim upon which relief may be granted against these defendants; for the reason that the complaint shows upon its face that the plaintiffs have violated their obligations imposed upon them by law and a contract, under the procedure provided by the Railway Labor Act, and that this court is, therefore, without power to issue an injunction, being prohibited from doing so by the express provisions of the Norris-La Guardia Act.

We further move to dismiss this case and complaint [fol. 484] herein as amended, and dissolve the temporary restraining order herein, for the reason that the complaint fails to state a claim upon which relief may be granted against these defendants, for the reason that the complaint as amended shows on its face that the plaintiffs do not come into this court of equity with clean hands, and that the plaintiffs have failed to do equity, and for that reason they cannot be allowed equity, which is the issuance of an injunction in this case.

Now, on the basis of that motion, if the Court please, we also, if the Court please, in the event the motion is not sustained, ask leave to amend our answer to reply to the complaint as amended.

May I have such leave?

The Court: You may.

Mr. Touchstone: We have no objection.

The Court: Both sides will be granted leave to amend.

Mr. Fonville: The Court asked counsel some questions which I will answer at this time if the Court permits me to do so.

The Court: The Court is agreeable to hearing any information along the line you request.

Mr. Fonville: The Court asked whether this was a major or a minor dispute.

[fol. 485] Our view is that it is a major dispute and that it is not a matter referable to the Railway Adjustment Board.

The Court: I would like to hear you on the latter part of that. Go ahead, and I want you to come to that before you conclude.

Mr. Fonville: In the next place, the Court asked, was there an emergency in existence in respect to the controversy here.

There is. I want to make it perfectly plain to the Court what is set out in the complaint.

The complainants had already made the changes that violated the contract, in our view, these changes, according to the information I have from the union men here, they cut ten men out of work.

The facts will show in this case that these changes have uprooted men from established home terminals where they own their own homes, and they are having to travel miles every day to get on a train. That is an emergency.

The law contemplates, as will be demonstrated to your Honor, and as your Honor knows, that these things will be kept status quo until they can be worked out by agreement.

These people have made the change. They plead in their own complaint that they made this change after the National Mediation Board had notified them its services had [fol. 486] been invoked, when the law says under those circumstances the status quo shall be maintained, but they didn't do it; they went ahead and made the change. They said we cannot keep the status quo in effect because they have made the change already. That change is hurting us. We depend on our daily pay and we are hurt in this emergency that confronts us.

The Court is right when you want to know if any emergency is here, and there is one.

We have no objection, and I say it for the record, to this disputes committee passing on this thing if these people keep it in status quo, but we do have an objection to letting them make the change and having us suffering from the change while these things are being determined.

Now, the Court asked how long this would take to be determined before the Railroad Adjustment Board. Six years. That is the status in that board, I am informed by people who are in it all the time.

One or two items of information, as well as this, in the original motion to dismiss herein one of the grounds for the complaint, as then written, was that the matter, that the plaintiffs had not complied with—I will withdraw that. I was was mistaken about that.

Now, if the Court please, shall I proceed with the motion to dismiss?

The Court: Yes, that is what I will pass upon. I might [fol. 487] state for you some things that come to the Court's mind in being confronted with a motion like that, and that might help you in enlightening the Court as to your position.

Just reviewing the matter historically, some 30 years ago the courts, acting within their judicial province, and under the common law of England which had been handed down from the states but not from Congress, they were granting quite a number of injunctions, and some of them became apparently seemingly oppressive on the group it affected.

There went forth a demand or a cry against government by injunction. That was the term used, as an outcry of that slogan.

As an outgrowth of that slogan and an outgrowth of that the La Guardia Act was passed. La Guardia was the real spokesman and champion of labor in Congress at that time. He had at another time been Mayor of the City of New York.

The manifest purpose of the law that we call the La Guardia Act was to strip the courts practically of jurisdiction.

The final consummation of that act was to the end that the court, before acting, should require the parties to meet every preliminary condition that was imposed by the Act or law, or show that they had made every effort possible to reach an agreement, before the court could act. In other words, staying it, in other language.

[fol. 488] You take the relation of the Probate Court and the District Court in the matter of wills. As a person's will is probated, if you present your will for probate in the Probate Court you have, under the law, an appeal to the District Court to review it.

So every act of these boards may be considered, but they are not final until—and the court cannot act in these cases—until every effort to get together—until every effort of these administrative boards has been disposed of.

Now, we might be confronted with this fact, which may be held to apply to one side as well as the other, the pur-

pose of the La Guardia Act is that you dispose of these things before you break into court.

Now, however, that was found to be a very extreme situation in some cases that arose.

We will take, for instance, the case where a strike was about to occur that would paralyze the Chicago Union Station, we might call it, was to be shut down by the strike, that would affect the stockyards, and thousands of people would be immediately affected on the stockyards, and everything there that was to be fed or cared for was to be affected. In that event the courts intervened. The court held that the La Guardia Act should be construed generally with the Railroad Labor Act, and that the court should act, and [fol. 489] Judge Warren, in a comparatively recent decision, upheld the action of the trial judge in doing so—that is on the circuit court. I believe the circuit court ruled against the case and the Supreme Court granted a writ of certiorari. At any rate, the La Guardia Act now is to be construed in all of its provisions, along with the Railway Labor Act, the two acts merging and covering the same field together.

However, the Railway Labor Act and all the interpretations of it that we have found, leave intact that provision of the La Guardia Act which says that the parties shall meet every preliminary condition beforehand.

Now, if, while the parties are meeting those conditions, the changed condition takes place, the court may see fit to use his equity powers to hold things in line at that stage. So that is the matter, as a whole, that appears to the court.

Now, there may be special situations in this case, in these facts that we are to hear, that will affect this matter, and it may be necessary to hear evidence, or we may find it sufficient to pass on the record as now before us.

Having made that explanation as the Court sees it, "looking at the forest and not the trees," you may continue your argument.

COLLOQUY BETWEEN COURT AND COUNSEL FOR DEFENDANT, MR. FONVILLE

Mr. Fonville: The first basic premise is that this is not a federal case.

[fol. 490] If the Court please, in this complaint the Railroad merely seeks to exercise its common law right to conduct its business without interference by concerted action—

The Court: That is what the La Guardia Act told them they couldn't do. Go ahead.

Mr. Fonville: We say the determination of the Railroad's right does not depend on the interpretation of the Constitution of the United States, or on any statute of the United States or any treaty, because they are merely asserting their rights.

The Court: One thing that may arise in connection with the motion to dismiss, the La Guardia Act didn't wholly withdraw from the court its equity powers if it became necessary and sufficiently urged.

Mr. Fonville: That is right, but the Federal Court, to have any equity power at all, has to have jurisdiction, and the La Guardia Act added nothing to the jurisdiction of the Court.

There is no diversity. It depends on whether a federal question is involved, and the Court knows the well established line of cases in that regard, that a federal question is involved only when the right sought by the plaintiff depends actually upon the construction of a federal statute or the Constitution, or a treaty of the United States.

Now, actually what they seek is an injunction, that is [fol. 491] true, but it is an injunction to protect them in what they claim is a common law right to conduct their business without interference. That is all it is. That is the law in Texas; that is the law in Oklahoma, and the other states in which they operate. They don't claim they have any right to be free from strike under the federal law, except in one instance, since they have amended their complaint they have pleaded that they have referred the matter to the Railroad Adjustment Board, and the only case the Court cited in point, and that one is the only one, by Justice Warren, and in that opinion he said the court could

issue an injunction to protect the jurisdiction of the Railroad Adjustment Board.

Now, to the extent that they have now amended and make that claim they, on that point, invoke a federal statute, and we say that on the face of their complaint the matter is not referable to the Adjustment Board because it is not a minor dispute; it is a major dispute.

Now, if the Court please, even if the Court determined that it had jurisdiction of the case on the ground that it was a federal question, then comes into play the provisions of the Norris-La Guardia Act, and that Act, as the Court has put it, says, "I will not give you an injunction unless you have done every thing the law requires you to do."

Then let us see what they haven't done that the law requires them to do. They have an Article 4 in their contract [fol. 492] with the BL & E, and the B L F & E. I will refer to it as the Engineers and Firemen, that says if they attempt to change an intradivisional run they will give notice and negotiate and so on. They haven't done that. They say they don't have to do it. They take an arbitrary attitude in this case. They don't have to maintain the status quo or obey their contracts, all they have to do is to ask an injunction in this court.

Let me point out something else. Under the terms of their complaint they recite they promulgated a notice, which shows it took effect October 19th. On October 14th the National Mediation Board, which is set out under that statute, notified them that its services had been invoked.

Now, the law is plain, it is spelled out in the Railway Labor Act, that when the National Mediation Board's services are invoked the parties shall maintain the status quo.

They became obligated under that law at that point to cancel those orders of October 19th and keep them canceled until the mediation was over. They didn't do it. They figure they are above the law. They put those orders into effect. They went into the change and they are in the change right now.

We have been hurting every day since October 19th, that is why we struck.

[fol. 493] Now, let me point out something else in this amended complaint.

They protested to the National Mediation Board that it had no jurisdiction of this dispute, and after that protest the Board came off this case. In the meanwhile, and at a time when the Board was asking them to change the status quo, they changed these things and put them arbitrarily and unilaterally into effect.

What do we find? That they, in their amended complaint, have submitted the very matter to the Mediation Board that we submitted, and now they have already made a change and they don't want to put it back into effect.

The Court: When both the plaintiff and defendant ask for a peremptory instruction to the jury in the box the judge sometimes withdraws the case from the jury and decides it.

Since the Mediation Board has been invoked by both sides why not refer it back to them?

Mr. Fonville: They have done this—

The Court: Are both sides willing to put the men back to work and let it remain until the Mediation Board acts on it?

Mr. Fonville: We are perfectly willing to abide the action of the various boards they have submitted it to if they will maintain the status quo, and the law requires them to do [fol. 494] that. When they ask for injunction they are asking you to exercise your equity powers, but they ought to do equity.

This must be a dispute, they have sent it to the Railroad Adjustment Board and the Disputes Committee under Article 8, and I suppose if we wait a longer time it will be somewhere else.

We are willing to abide the decisions of these boards if they will maintain the status quo and not make us hurt until those boards decide, and if they are going to ask equity they ought to do equity. That is why we say this thing ought to be dismissed because they are asking this court to grant the injunction but they are not willing to do the right thing by us.

Now, if your Honor were to say to these people, "I will not give you an injunction unless you restore the status quo," that would be perfectly satisfactory.

The Court: I will hear from the company.

Mr. Clinton: If the Court please,—

The Court: Of course, we are getting off of the motion to dismiss, to a degree, but, nevertheless, the whole thing, the equity, the justice to the parties is before us.

Before you start will you advise the Court how many men are not drawing pay that were at the time this alteration or change was made.

Go ahead.

[fol. 495]

STATEMENT ON BEHALF OF PLAINTIFFS BY MR. CLINTON

Mr. Clinton: In response to that phase of it counsel fails to tell the Court that under the working agreements with the company anybody who is deprived of work wilfully, or even contends that they are deprived of work, they can take it before the Board, and we have to pay every dollar coming to them.

His entire argument assumes a violation of the agreements and that is a question in the case, and whether or not there is a violation of practice and custom, is something for those Boards to decide.

The question is not whether we had the right to do what we did, but the question was whether what we did was wrong and in violation of any agreement.

Now, the decisions of the First Division, some of which have been attached to the submission, expressly state that in the absence of any agreement to the contrary, in the absence of any agreement prohibiting the act of a carrier, that a carrier may do anything, that the organization must find in the agreement some where a prohibition against the thing which the company does.

We say there is no prohibition, and we say, furthermore, that the agreements they rely upon do not prohibit us from doing it. There is not any prohibition any where in any agreement, and we had a right to make this change.

[fol. 496] And if, as was said in the Toledo case, the doing of the thing produced an injury to someone, then the question can be presented, and that is the question we present now. Is the change we made a violation of the agreement? If it is we will have to pay these people upon their presentation of the claim.

The National Mediation Board did not request us in the first telegram to maintain the status quo, and I will say to the Court that in this proceeding before that board where these organizations had that question up before them, and the Mediation Board had investigated the dispute to determine whether they should docket it, in the prior cases the board requested the carrier not to make any change, and we didn't on two occasions, and on each of those occasions the National Mediation Board sent a mediator out and had an investigation made, and the board said, in effect that, "You haven't violated your agreements, the articles pointed out to us do not prohibit it, and we will not docket the case."

Now, in this particular instance, the third time these people go to the Mediation Board, and the executive secretary of the board merely quotes to us the telegram which the board received, and they say to please acquaint the company with the status quo provisions of the Act, but there is no request from the board that we maintain any status quo such as they have asked us to do in the previous cases.

[fol. 497] The Court: Now, right at that point, is that paragraph of this matter pending both before the Adjustment Board and the Mediation Board? Our idea is that you may go to the Mediation Board after you have finished with the Adjustment Board, or that the Mediation Board may be, on the gravity of the situation, take hold of it itself.

Mr. Clinton: Let me read what the Mediation Board has said.

The Court: Yes.

Mr. Clinton: The twenty-third annual report of the National Mediation Board to Congress, for the year ending June 30, 1957, it is under the general heading "Interpretation and Application of Agreements," on Page 42, the Mediation Board says:

"Under section 5, second, of the Railway Labor Act, the National Mediation Board has the duty of interpreting the specific terms of mediation agreements. Requests for such interpretations may be made by either party to mediation agreements, or by both parties jointly. The law provides that interpretations must be made by the Board within 30

days following a hearing, at which both parties may be present and defend their respective positions.

"In making such interpretations, the National Mediation Board can consider only the meaning of the specific terms [fol. 498] of the mediation agreement. The Board does not and cannot attempt to interpret the application of the terms of a mediation agreement to particular situations." That is exactly what we have here, a particular situation.

The Court: Now, Justice Warren says that the Adjustment Board must handle particular situations. Now, is this a particular situation?

Mr. Clinton: We say it is, because they contend we violate specific provisions of the agreements which have been in effect since 1918. That is clearly an Adjustment Board matter, and that will be decided by the Adjustment Board on our submission which is pending there.

Also, the National Mediation Board said in effect that whenever there is any agreement, even though it be made under the auspices of the National Mediation Board, that that is a labor agreement which must be interpreted by the National Railroad Adjustment Board, and we have submitted that because there are two agreements here which involve the interpretation and application of their terms to a particular situation, and we have submitted the whole thing to the Board, which is the proper place to go.

Now, Judge Warren, in his opinion recognized that after a matter is submitted, regardless of what may have occurred before, when the matter is in the lap of the Adjust- [fol. 499] ment Board the jurisdiction of the Board must be protected, if necessary, by injunction.

These people will strike to compel us to restore a situation on their statement that we are violating an agreement, which is the very question in dispute.

Judge Warren says, in 353 U.S., page 30, "The ultimate question is whether a railway labor organization can resort to a strike over matters pending before the Adjustment Board."

That is what they would do today or tomorrow if this injunction is lifted.

In the Toledo case, 246 Federal, where they say—

The Court: Is that the McAlester decision?

Mr. Clinton: Yes, your Honor, he says, "We proceed first to ascertain whether under the Railway Labor Act, or the Norris-La Guardia Act, the controversy arose out of the railroad closing its yards, constitutes a labor dispute."

And he finds it does not, and he even goes further and says it is not a labor dispute under the Railway Labor Act, and the situation is what we have here, there was no agreement with the organizations which would prohibit the railroad company from closing the yard.

There is no agreement these people can point to which prohibits us in making a change in the runs.

I want to say, these agreements he talks about do not [fol. 500] prohibit us from making a change in the runs. If the agreements have any application at all it would prohibit us from establishing a type of service, without negotiation. This service had been established for 30 or 40 years. We only made a change in a service there.

These agreements say when a carrier desires to establish a certain kind of service they will negotiate. It doesn't say anything about making a minor change in a service already established, but that is for the Adjustment Board to say whether these facts bring it within the prohibition, if there is a prohibition.

Not only that, this McAlester case says the district court had jurisdiction of the subject matter, and they sustained an injunction against a strike. So they have jurisdiction over the subject matter to preserve the jurisdiction of these boards, to prevent damage to the public as the result of a strike called to enforce a contract which should be submitted to some other agency, which we have done.

Not only that, but the very telegram that went from these people to the National Mediation Board, it didn't say that the railroad companies are violating the agreements which prohibit the establishment of a service.

The telegram merely said we are violating the agreements in making a change in the service, which is not even within the purview of the agreements upon which they stand.

[fol. 501] On this question of jurisdiction, as I understand it, a board, like a court, will determine its jurisdiction. The mere fact we have raised a jurisdictional question within

the National Mediation Board does not mean that the case is not there. We raised that jurisdictional question in order that they may determine whether this controversy we have submitted there is within the language which we just read to you. If they say it is not I assume they will dismiss the case before the Mediation Board and the Adjustment Board will go ahead.

These boards are independent; the Mediation Board has no control over the Adjustment Board, and vice versa.

These Boards may or may not decide that they should make that determination, so it comes down to this: There is no agreement of any kind which they can point to that prohibits us from making a change, and in the absence of such an agreement the Adjustment Board has held we not only have the right, but it is our duty to improve our service, and that was the purpose of the change.

The situation was we were using steam power before this, and you would have to have short runs. When you are using steam power you cannot run a steam engine long distances, and we commenced using Diesel engines which permitted us to make long runs. It was a change in the service which was necessary and the Adjustment Board has held [fol. 502] that a railroad company can make those changes in the absence of a prohibition in the agreement itself.

I don't think there is any question but what this court has jurisdiction over the subject matter and should enjoin these people from striking, to preserve the jurisdiction of these boards to decide this question.

Mr. Fonville: Now, if the Court please, let us look at the picture here.

The Court: All right. When I was a young lawyer I couldn't see but one side, and that was my own, but I am looking at two sides now.

STATEMENT ON BEHALF OF DEFENDANT BY MR. FONVILLE

Mr. Fonville: Yes, your Honor, and I am going to paint a picture on which there is one side.

It is undisputed, because it is their own pleading, that on October 14th, before these changes went into effect they were notified that the jurisdiction of the Mediation Board, the National Mediation Board, had been invoked, and Mr.

Clinton has just said that nobody asked us to keep the status quo from the Mediation Board.

Now, Mr. Clinton didn't have to have anybody ask him that. The law is very plain. Section VI of the Railway Labor Act says, in every case where such notice of intended change has been given, and a conference being held with reference thereto, the service of the Mediation Board has [fol. 503] been requested by either party, or the Board has proffered its service, rates of pay, rules of working conditions shall not be altered by the carrier until the controversy has been acted upon.

If that doesn't say to maintain the status quo I don't know what it says, and nobody has to tell you this. Mr. Clinton knows the law, the railroad knows the law.

Now, furthermore, here is the picture I want to paint. Here are the plaintiffs who are saying to your Honor there is no question whatever that there is a big dispute between us and the union, our employees. We have invoked the services, we, the plaintiffs, have invoked the services of the Railway Adjustment Board, of the Disputes Committee under Article IV of the national agreement, of the Disputes Committee under Article VIII of the mediation agreement, of the National Mediation Board, and when their services are invoked the law says you have to maintain the status quo.

Now, he says they have done that. There is a dispute and we are asking everybody to decide it for us, and he wants you to enjoin the strike.

Now, I don't have any quarrel with Justice Warren's decision, just as Mr. Clinton said, authorizing the granting of an injunction against a strike when the matter is pending before the Railway Adjustment Board. That is true.

But, if your Honor please, Mr. Clinton overlooked some- [fol. 504] thing basic to the issuance of an injunction. The basic condition precedent to the issuance of an injunction is that the man who seeks the injunction shall have done equity, and come into this court with his hands free and clean of having not done equity.

All we say to your Honor is, tell them to maintain the status quo, if they want your injunction, let them put this thing in status quo. He says they can file claims and get

paid. That begs the question. There are a lot of things we can't file claims and get paid for.

If, as we contend, we have a right here to have these changes negotiated in collective bargaining, the railroads must negotiate with us.

When you uproot people from their homes in towns like Altus and arbitrarily make them travel to Elk City to get on a train you have caused them detriment that they won't be paid for, that is why we say we have a right to negotiate these things.

Now, he says we can't point to a contract. Well, he is just mistaken. In his submissions he quotes a contract that has Article IV in it. This is a part of the contract between the engineers and firemen and the plaintiffs, and he sets it up in his pleading. The pleading shows that what these people have done, and they plead it, they had a run going from Wichita Falls to Altus, Oklahoma, and they had [fol. 505] another run going from Altus to Elk City—I mean Woodward, and another one from Woodward to Elk City—I will repeat—Wichita Falls to Altus, Altus to Elk City, Elk City to Woodward, and Woodward to Forgan. That is on one division of this railroad. They made a change unilaterally, without negotiations, and changed those runs from Wichita Falls to Elk City, and Elk City to Forgan.

Here is what the contract says. It doesn't take any great amount of reasoning to understand this; it is plain. Article IV, now I will read some of the material parts.

Where a carrier desires to establish intradivisional runs in freight service the carrier shall give notice to the general chairman of the organization involved of its desire to establish such runs, giving detailed information, specifying the service it proposes to establish and the conditions, if any, which it proposes shall govern the establishment of such service.

The purpose being to furnish the employees with all the information.

The parties will negotiate in good faith on such proposals and, failing to agree, either party may invoke the service of the National Mediation Board.

If mediation fails and the parties don't agree to arbitrate the dispute under the Railway Labor Act, then, at the request of either party the proposal will be considered by a

[fol. 506] national committee consisting of the chiefs of the organizations involved, and an equal number of carrier representatives. Provided, however, that this procedure of appeal, which is permitted, shall be made in any case not less than six months from the time of this agreement. It provides if the committee does not agree— "In the event the parties do not agree upon such neutral chairman, then upon request of the parties or either of them the National Mediation Board will appoint a chairman."

Now, they didn't follow that procedure; they made a run from Wichita Falls to Elk City. They didn't go through this proceeding until now they make the change, they deny this board has jurisdiction, in spite of that contract, refusing to maintain the status quo and we ask them to do it.

And they want an injunction against our strike because they didn't live up to the agreement. We are not unreasonable, we are not arbitrary. We say if they will maintain the status quo we will let the committee decide it. We are are not going to stand by and let them break the agreements with us and violate the law, and not maintain the status quo.

He asks us to sit by while this is being decided, while we are being hurt. He can't argue that is not a dispute. He should not have submitted this to the Railroad Adjustment Board or Disputes Committee. The Disputes Committee, under the mediation agreement and the National Media- [fol. 507] tion Board, if he submitted it to all those places he has to admit it is a dispute, and if it is he ought not to have made this change at all. He could have settled it, and he makes it he doesn't want us to have any rights in the matter.

I say if he is going to ask for equity he should do equity and if he doesn't do equity he has no right to an injunction and this complaint ought to be dismissed.

The Court: I asked counsel to give me some information about the number of men that were put out of employment by the change.

Mr. Clinton: There were ten.

The Court: And they are not now on the payroll?

Mr. Clinton: No, sir, they are not.

The Court: Now, then, if you have any reason to reply I will hear you.

REPLY STATEMENT ON BEHALF OF PLAINTIFFS BY MR. CLINTON

Mr. Clinton: Counsel lays some stress on Section VI of the Railway Labor Act, and it has no application to this controversy.

I will read what the National Mediation Board had to say about the application of this section to this controversy, when it was before the Board before, in 1955 or 1956. The Board assigned to the complaint a file number which they called "C-2394" which means that the Mediation Board will make an investigation and determine whether there is [fol. 508] enough merit in what they contend to justify the board going into mediation.

On February 10, 1956, after the investigation was made, the executive secretary sent a telegram to the company's assistant general manager and to the presidents of the unions in respect to the dispute and this is what was said:

"Investigation of this file indicates that carrier has complied with Article 10 (f) in Conductors' and Brakemen's agreement and Article 34 of Engineers' agreement by serving notice required under those articles of change in assignment. Investigation further indicates that no formal notices have been served by either party on the other for change in agreement on this subject. Section 2 Seventh and Section 6 of RLA (Railway Labor Act) apply only in situations where notices of changes are served by either party on the other in rates, rules or working conditions as covered by agreements. In absence of such notices this Board fails to find any basis for docketing application for mediation filed by the four organizations."

Now, one of these presidents didn't like that telegram and he wrote and wanted to know what authority the Board had to say whether their working agreement had been complied with. So in explanation the secretary wrote back, [fol. 509] on February 29, 1956: "You state that some question has arisen regarding the authority of this Board to determine whether or not the carrier 'has complied with Article 10 (f) of the Conductors' and Brakemen's Agreement and Article 34 of the Engineers' Agreement by serv-

ing notice required under those Articles of change in assignment.'

"Our telegram of February 10, 1956, stated only that the Mediator's investigation of this file indicates that the carrier had complied with those articles by the serving of required notices. The question of proper interpretation or application of those articles to the controversy was not touched upon.

"The National Mediation Board has no power under the Railway Labor Act to interpret the provisions of working agreements nor make any determination regarding compliance or non-compliance with such agreements in any particular situation. Such determinations can, of course, be made only by the National Railway Adjustment Board.

"Our telegram was intended to direct attention to the fact that in the absence of notices served by either party on the other for changes in rates, rules, or working conditions, no basis exists under Section 2, Seventh, or Section 6 of the Railway Labor Act on which the application filed by the three organizations could be docketed. Any questions involving the proper interpretation or application of agreement rules would come under the jurisdiction of the National Railway Adjustment Board."

[fol. 510] Now, he has a lot to say about these agreements, which he terms Articles 4 and 6.

Mr. Fonville: Article 4 doesn't pertain; Article 6 does.

Mr. Clinton: He said where a carrier desires to establish runs in interdivisional and other service. Those runs have been established out there for years. It doesn't say where they desire to change a run. We have had these runs from Wichita Falls to Forgan for more than 30 years, so we are not establishing an intradivisional service, within the meaning of that, and the whole question is whether we are right; it is merely a change.

Now, then, this committee that is set up by this agreement, called the National Committee, or Disputes Committee, the question has been presented to them by other brotherhoods and unions, and you will find when you read them the committee held there was no violation of this agreement if the runs had already been established, and finally they come around to the point where they say that if

under their agreements the carrier could have established the run, this other agreement does not apply, so that they drive you back to your working agreement which in every instance must be construed by the National Railroad Adjustment Board.

As I told you before, in some of these submissions. we [fol. 511] set out the decisions of this board, and they say: "It is elemental that the efficient and safe operation of a railroad is the prerogative of management except to the extent that it has been limited by law and the contracts which it has made."

"The Board does not function in a vacuum. We are well aware that enlightened railroad labor organizations recognize the principle that the schedule agreements do not deny to the carrier the right to manage and operate its properties economically and efficiently and that the carrier is also under legal obligation to do so. The carrier's fundamental management rights are restricted only to the extent that they are limited or surrendered in the schedule agreements."

These people would have us go to some board every time we want to do any thing that is necessary in the management of our property.

Are we going to turn the operation of the railroad over to our employees? Manifestly, some body has to make the decision in the first instance, and if the other party contends you violated it he can take it into court, or he can take it to these boards.

The duty was on these people to take this controversy to these boards, not us. It was their duty to take it there instead of using the big stick of a strike. We took it there [fol. 512] because they failed to do it. We say we didn't have to take it any where.

And they made the same argument that every time you make a change you are violating a contract and changing the rules or working conditions. And that statute there says it is the changes in the agreements that you must negotiate on, not the application of agreements to a particular fact situation.

We are making no change in any agreements. We served no notice on that, neither have they. They don't have a contract protecting them, and if they wanted one they should have served the notice on us. They didn't do it.

This is a question of whether or not we have violated an existing labor agreement which the Adjustment Board should determine. The First Division of the National Railroad Adjustment Board has also said: "These claimants base their claims upon the contention that the carrier had no right to cancel established assignments and bulletin new assignments. No contract or rule has been cited to us to sustain such a claim. The carriers have the prerogative to arrange their train assignments to conform to the demands of traffic.

"Even when an assignment was originally established as the result of a conference the rule is the same; nor is there any rule as to how long new assignments shall remain in effect. There could not well be such a rule if the carrier is to stay in business.

"In the absence of a prohibitive rule it appears proper [fol. 513] for a carrier in order to meet changed conditions to rearrange runs and make assignments accordingly, and to pay for the service on the rearranged basis according to the time and mileage of the run." That is what we are doing.

We think we are entitled to this injunction to prevent a strike while the matter is pending before the adjustment and other boards.

Mr. Fonville: May I be heard?

The Court: I will hear you briefly, but I think we have had a rather full discussion.

Mr. Fonville: It is indeed curious that you have heard no offer on the part of the carrier to do equity this morning. He has made his change, and now he submits the question of whether he had the right to make the change to the Railroad Adjustment Board and the Disputes Committee.

And reading opinions of the Disputes Committee, and that committee passes on the applicability of Article 4.

We do not complain about the committee deciding the change if he will do equity and restore the status quo and keep it that way until they make the decision. The disputes

Committee will not take six years; apparently they get their decisions out in a period of months.

Three or four times in this argument I have suggested equity be done if equity is sought. There has been no offer to do equity.

Is it not curious that this railroad wants you to enjoin us from redressing our wrongs, and at the same time do not [fol. 514] offer to do equity. They don't come in here with clean hands.

Mr. Clinton has just argued to your Honor that unless Section 6 notice is served the matter never comes to the National Mediation Board. This would, of course, reduce the proposition to the most ridiculous absurdities, this is what it says: "No carrier shall change the rates of pay, rules or working conditions of its employees as a class embodied in agreements, except in a manner prescribed in such agreement, of Section 6."

That section that says you serve notice and negotiate, you go to the Mediation Board. If you want to arbitrate the president can appoint a fact-finding board.

Now, if the Court please, if Mr. Clinton was right, the railroad could change any contract it has.

He argued about the Board holding it had no jurisdiction after Article 10(f).

Mr. Clinton: I said we had complied with Article 10(f).

Mr. Fonville: That is another matter. We are talking about Article 4. I am talking about his violating the law.

The Mediation Board had this case in its files when he made the change, they didn't pull off this case until after the 21st, and he made the change on the 19th. They asked him on the 20th to keep this thing in status quo, and he said, [fol. 515] "We can't; we changed it yesterday."

***

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: Gentlemen, the Court will carry the motion to dismiss along with the main question. I might say, I think the Court's duty under the law and in justice to all parties, in light of equity and contract relations, that the Court's duty by this pleading and by this discussion has

been clearly outlined, and before we come to that I might state that the law does not contemplate that the judge of a court of law or a court of equity shall go into the evidence on the merits of the controversy. No, not until the boards that have been created for that purpose.

While it doesn't say that, in effect it says it in more forceful terms when it says that no action shall be taken by the court until the parties have exhausted every remedy before the boards.

All right, now, let us go back to the origin of the boards.

Originally we had a mediation board. I believe our Governor, Pat Neff, was on that board a while, and that board was about like some of the treaties we have tried to write, calling for a cooling time between nations. They will have the cooling time if they are afraid they will get whipped, and if they are not afraid they will get whipped they will [fol. 516] forget about the cooling time.

The first mediation board was without authority. It was their purpose to get the parties to reason together and to lead them to one point. That point was to settle between themselves.

The second was to refer it to arbitration.

That was the first thought of everyone upon whom responsibility of those conditions would rest.

The Mediation Board, no doubt, brought about many settlements, but things would occur where they would not agree to arbitrate once in a while.

You know, people sometimes get wrought up, and if a reporter is present I don't want what I am saying here in the newspaper. The same thing has happened here. The parties have been wrought up. Reflections in writing have been served on this Court that indicate you have been unduly wrought up and worked up in this case. Forget that; if that has happened to any of you, forget it.

Now, the law has stated in the La Guardia Act, and as indicated in Judge Rutledge's decision, and not overturned by Justice Warren, that the court shall not act until the board has said, "We are through."

That being true, manifestly, it is not contemplated that the court shall start hearing evidence when the Board has yet to hear it.

[fol. 517] It is fairly clear that the boards have never considered the seriousness of this controversy. The most we have had here is that one of the boards sent a telegram down here, and neither side has produced any written authority or decision from the Railroad Adjustment Board.

Now, when the Mediation Board, as it originally stood, was unable to get them to agree, then sometimes they could agree on an umpire, so that the strike would go on.

So they changed the law and created a mediation board, called an Adjustment Board, and that board eliminated the idea of having them to agree on an umpire, composed of something like 30 odd members, separated into four divisions, and the Adjustment Board is composed of an equal number of men selected by the unions and by the management.

Therefore, the law has created a board, and that board has been selected from these two groups who are liable to be brought into the controversy.

And the law is, under the La Guardia Act, the law is that the judge must stay hands-off until this board acts. Manifestly, that board has not acted. The most it has said is to send a telegram here.

Now, coming back to the question of arbitration, under the law, and the safeguard of mankind through the years has been found to be in the written law. Sometimes the letter of the law is severe, when the spirit of the law is light. [fol. 518] You have seen that in the books; you have seen that in principle. The spirit of the law can prevail, where you have arbitration, and the letter of the law must prevail when you go into the court room.

If I were on the arbitration committee, with the whole committee, I would say that we submit it to an arbitration right now.

And I would earnestly ask you gentlemen to pick some people to hear it, and let them decide what is right. Arbitrate this matter. That is the Court's first admonition. If you can't do that then we will come to the Adjustment Board, and the law is contemplated, and you have shown that you cannot always reach agreements, but we think you might here.

When you get to the court of last resort, and I hope that will not be necessary, if it does get up there you will probably find that it will be held to be a minor controversy and that the major controversies deal with contracts as a whole.

Of course, if it gets down to a strike or no strike, it is a major affair.

Now, I am going to say this: I am going to beg you to settle this thing in the old fair way and spirit of what is right and wrong, by selecting arbitrators. If you can't do that, then the Court must refer you to the board that [fol. 519] Congress has created, and that is the National Adjustment Board. That board has not acted. It has sent a telegram here, but a board of its importance and dignity is due to act with more force, with more certainty, as to what it intends and has attempted to do.

Now, I am going to let this matter stand as it is, hoping, first, that you will arbitrate on your own initiative, and, second, if you cannot arbitrate, then you will go to the Adjustment Board, because it is the board that has the jurisdiction, and while you are waiting, that you put these ten men on your payroll that are standing on the sideline.

Mr. Fonville: If the Court please, I will repeat, in response to the Court's earnest suggestion to us, we stand ready and willing to let the Disputes Committee, under Article 4, from whose decisions Mr. Clinton read, we stand ready and willing to let this case stand on the submission to that Disputes Committee. That is, that that committee decide it, provided, and I think we ask nothing but fair play and equity in this, provided they will restore the status quo as it was before these orders. If he will do that the firemen and engineers who come under Article 4, and the trainmen and the conductors who do not, will fight the decision on Article 4 with the Disputes Committee, and that is a committee of the highest level with the railroad, and on the part of the carriers and on the part of the unions, and they [fol. 520] specifically set up the practice that they do determine whether Article 4, interpreting it, whether it applies in a certain case or not.

Now, we are willing to do that, and I think nothing can be fairer than that.

The Court: You might compare this situation to a domestic row, because the management gets hard, just as the boys that fight. And in a domestic row, if you want to get people back together don't try to find out who is to blame.

Now, this committee, a real arbitration must come from agreed action. If you can't agree on arbitrators, of course, you will have to abide by the Adjustment Board, until that board acts. I think either side ought to push that along a little, until that board acts, that the men who are out of employment shall draw their pay and the road, however, may exercise its discretion as to whether or not it will readjust its division points or whether it will pay the salary of these men and keep its division points.

It ought not to take over 30 days to reach this decision and get the matter disposed of, but it is necessary for that board to act because under the law it is useless to have this court hear testimony, because that board should act first.

Mr. Fonville: What says the Railroad?

Mr. Clinton: I will be glad to draw the order as your [fol. 521] Honor indicated. Whether we will reach an agreement on arbitration is something we will have to discuss with them, and whether or not we would want to leave it to the Disputes Committee, which has it now, rather than arbitrate, is something we would have to discuss.

The Court: As I said here the other day, if they go ahead it will hurt both themselves and hurt the management at the same time. There are three parties affected. One is the whole public, this company serves quite a territory, and the next is the men who will order the strike, and their subordinates and constituents will be out of employment, and they are going to depend on a court to restore them, or they will have to depend on the National Mediation Board, and you will have other controversies where now you have one.

So, we are very much inclined to the idea you are sitting on a gasoline tank and smoking a pipe, and you ought not to let it get on fire.

This question ought to be settled here while there is one question before you, and it could be settled by arbitration, and if not, by asking the court that the law has created to hear it, and that is the Adjustment Board.

You may draw the order.

Mr. Clinton: May I offer in evidence the affidavit of Mr. Winkel, which has been filed, also the submissions to the various boards that are attached to the complaint?

[fol. 522] Mr. Willis: If your Honor please, if they offer them, then on a motion to dismiss there is no evidence necessary?

The Court: I indicated that that evidence should go to the Adjustment Board.

Of course, if you have arbitrators you can put that matter before them.

Mr. Fonville: For my clarification, the Court has assumed that we are in agreement. I want to know that we are.

The Court: The Court has urged you to get together into agreement.

Mr. Fonville: If we can agree such an order may be drawn.

The Court: Well, you will know, perhaps, whether or not you can agree in a few hours, then you need not draw the order if you are in agreement, but I think it would be well to draw an order and sign it as to form and let the Court have it and you can still arbitrate.

Mr. Fonville: I want to be fair with the Court, and my statement on that is a predicate to what I am going to say. If we are not able to agree we would have to object to the entry of any order that continues this injunction.

The Court: Well, to be sure that you protect yourself, I have announced the order, and you take your exception to it, and that doesn't stop you from arbitrating.

[fol. 523] Mr. Fonville: I think I should observe at this time that on the basis of the present record, any continuance of the present injunction would be without authority, for the reason that the Act forbids the entry of an injunction except on oral testimony, and there has been no oral testimony.

We would have to object to this affidavit when it is offered.

The Court: All right, then we will proceed with the oral evidence.

Mr. Fonville: My suggestion would be, if the Court will

let us discuss this, I think we can agree upon it and come back with an agreement.

The Court: I hope you can, but I am afraid you are not in a spirit to do it.

Mr. Fonville: I am in that spirit, but I think the Court would feel me negligent in my duty if I agreed to the entry of an order when there is no evidence.

The Court: While you are drawing that order, and while you are discussing it or disagreeing about it, there will be 2,000 men who will be greatly discommoded by what is done.

You can see whether you can get together and we will recess this hearing until 2:00 o'clock, and at that time we will see what you have done.

[fol. 524]

AFTERNOON SESSION—December 18, 1958

Mr. Fonville: If the Court please, since court recessed this morning we have endeavored to draw up an order in line with what we understood the Court to indicate the order to be and now submit it for the Court's approval.

We have conferred briefly with plaintiffs and the defendants, through their counsel, and they have been unable to reach an agreement to arbitrate.

We believe this is the order the court had in mind and we signed it with our approval. I don't believe the plaintiff agrees, so their signature is not on it.

Mr. Clinton: The railroad company plaintiffs made this proposition during the recess, that we would agree to arbitrate this dispute; we would agree to the creation of an arbitration board and if we could agree on a neutral man, and if not we would ask the Mediation Board to appoint a neutral man, and that from today until a decision is rendered by such arbitration committee, that we would pay a minimum day's pay to each of the employees displaced, not exceeding the ten we talked about, less any amount of money which they might have earned from us in employment during that time, provided that the defendants would give us a bond to reimburse us the amount we have paid out, if the arbitration committee held we were right and didn't have to pay them at all.

[fol. 525] They liked that arrangement all right, but they didn't think they ought to make us whole if they lost. The order which they submit we think is not proper. In the first place, it recites, near the bottom of page 1, that the plaintiff should restore the conditions affected by the general orders. We understood it the Court said we could put them on the payroll.

The Court: I gave you the option of restoring the condition or putting them on the payroll until you got a decision from the Adjustment Board.

Mr. Clinton: We feel, in view of the objection raised by the other side, that we should call a witness and put on evidence in support of our motion for a temporary injunction.

The Court: Gentlemen, you are so nearly together it would be almost criminal for you not to brush out the thing that stands between you.

You have imposed two conditions that are of such a character that they may make it impossible for you to arbitrate. In the first place, the National Mediation Board may say, "We don't know who to appoint as a referee or an umpire, and we decline that responsibility." So you may fall down there.

Then, in the next place, restoring the money that will be paid out. The Adjustment Board ought to act on this [fol. 526] and move so that you won't pay out so many hundreds of dollars, compared with what all of you are going to lose if this strike is pulled off.

Mr. Touchstone: We would be out about $30,000.00 a month.

The Court: I don't think you want to arbitrate this thing.

Mr. Touchstone: Yes, we do, and we propose neither side lose. If we are wrong, we pay these men our money, and if the Board says they are wrong they don't want to repay it.

The Court: All that court order directs is that everybody be left in as good condition as found until the board has an opportunity to act.

Mr. Touchstone: That was our proposition.

The Court: Well, it seems that all both of you agree to is that you are not together.

Mr. Touchstone: No, they will not make us a bond.

Mr. Court: You have a court you can come back to.

Mr. Touchstone: We would have no agreement, and we would have spent the money, and we could never get the money back.

The Court: I think you can afford to risk that amount.

Mr. Touchstone: It is $35,000.00 a month.

The Court: How much would you be paying them?

[fol. 527] Mr. Touchstone: I am wrong about that; that is $35,000.00 a year.

The Court: Sometimes you can persuade men to do something, and sometimes you can bump their heads together and help them a little further along.

I think each side is being a little mulish in this matter.

You are both my friends and I will take the liberty of saying that to you.

Mr. Touchstone: I will say to the Court, we offered to put this up in escrow where it cannot be spent.

The Court: I don't think you ought to reflect on the Court by putting the effect of his order in escrow.

Mr. Touchstone: I must explain to the Court, they objected to the bond; then we offered to put it in escrow.

The Court: It would be $35,000.00 for a year, if the Railroad Adjustment Board cannot act in 30 days you can come back with a further motion. The only risk you would take would be $3,000.00, and how would that compare with what you would undergo, and the men would undergo?

Mr. Touchstone: They are risking nothing; why should we take all the risk?

The Court: I don't appreciate your remarks. We know they are risking every thing, three months' wages knocked out will put the wolf at their door; yet you say they risk [fol. 528] nothing. Why do you want an indemnity?

Mr. Touchstone: In case the Board holds they are wrong and we are right, then we can be restored to our original basis.

The Court: I don't take any stock in your indemnity bond or your escrow agreement.

The Court will look these two agreements over. I hope we haven't been intemperate in our observations, but I am fearful counsel has provoked even worse than we have said.

The Court Crier will now adjourn court.

•••

[fol. 529] Reporter's Certificate to foregoing transcript (omitted in printing).

[fol. 530] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS,

DALLAS DIVISION

No. 8061—Civil

Transcript of Hearing on Motion of Plaintiffs to Stay the Injunction—January 5, 1959

[fol. 531] The Court: All right, Gentlemen, I understand we have some motions with reference to the Katy Railroad situation. You may explain it to the Court.

Mr. Touchstone: I would like to get the original of my motion and the amendment thereto.

I will say to the Court, and the other side have received copies, we have given notice of appeal and perfected an appeal from a portion of the Court's order in this case, which we have a right to do under the Federal Rules, and that is the portion where the Court gives a mandatory injunction whereby he restored the status quo, before October, 1958, or alternatively to pay the ten men displaced their wages retroactively.

That is the portion of the order we are filing now, and I think I will just read the motion.

(Motion read by Mr. Touchstone.)

Mr. Touchstone: Now, that is the motion, and I would like to make a few observations in support of it.

The Court has in mind the facts of this case as disclosed by the pleading and the argument, and I will not take the time of the Court to review the background, but wish to emphasize the reasons why the Supreme Court has held the courts should not take any action affecting the merits of controversies which should be submitted to the National Railroad Adjustment Board, and should enjoin a strike [fol. 532] to protect the jurisdiction of the Board.

(Mr. Touchstone reading brief.)

"The Supreme Court has held that courts should not take any action affecting the merits of controversies submitted to, or which should be submitted to, the National Railroad Adjustment Board, but should enjoin a strike to protect the jurisdiction of that Board. In *Order of Railway Conductors vs. Pitney,* 326 U.S. 561, 66 S. Ct. 322, 90 L. Ed. 318, the Supreme Court said:

> " 'The factual question is intricate and technical. An Agency especially competent and specifically designated to deal with it has been created by Congress. Under those circumstances the court should exercise equitable discretions to give that agency the first opportunity to pass on the issue. Certainly the extraordinary relief of an injunction should be withheld, at least, until then (citing cases). Only after the Adjustment Board acts, but not until then, can it plainly appear that such relief is necessary to insure compliance with the statute. Until such time, O.R.C. can not show irreparable loss and inadequacy of the legal remedy. The court of equity should, therefore, in the exercise of its discretion stay its hand.' (U.S. p. 567, L. Ed. p. 323)

"That decision was reaffirmed in *Slocum v. Delaware, L. & W. R. Co.,* 339 U.S. 239, 70 S. Ct. 577, 94 L. Ed. 795, [fol. 533] wherein the Supreme Court said:

> " 'In this case the dispute concerned interpretation of an existing bargaining agreement. Its settlement would have prospective as well as retrospective importance to both the railroad and its employees, since

the interpretation accepted would govern future relations of those parties. This type of grievance has long been considered a potent cause of friction leading to strikes. It was to prevent such friction that the (May 20,) 1926 Act provided for creation of various Adjustment Boards by voluntary agreements between carriers and workers. 44 Stat. 577, 578, Ct. 347. But this voluntary machinery proved unsatisfactory, and in 1934 Congress, with the support of both unions and railroads, passed an amendment which directly created a National Adjustment Board composed of representatives of railroads and unions. 48 Stat. 1189-1193, ct. 691. The Act thus represents a considered effort on the part of Congress to provide effective and desirable administrative remedies for adjustment of railroad-employe disputes growing out of the interpretation of existing agreements. The adjustment Board is well equipped to exercise its congressionally imposed functions. Its members understand railroad problems and speak the railroad jargon. Long and varied experiences have added to the Board's initial qualifications. [fol. 534] Precedents established by it, while not necessarily binding, provide opportunities for a desirable degree of uniformity in the interpretation of agreements throughout the nation's railway systems.

" 'The paramount importance of having these chosen representatives of railroads and unions adjust grievances and disputes was emphasized by our opinion in Order of R. Conductors v. Pitney, 326 U.S. 561, 90 L. Ed. 318, 66 S. Ct. 322, supra. There we held, in a case remarkably similar to the one before us now, that the federal District Court in its equitable discretion should have refused 'to adjudicate a jurisdictional dispute involving the railroad and two employee accredited bargaining agents . . . ' Our ground for this holding was that the court 'should not have interpreted the contracts' but should have left this question for determination by the Adjustment Board, a congressionally designated agency peculiarly competent in this field. 326 U.S. at 567, 568. This reasoning equally supports a denial of power in any court—state as well as federal

> —to invade the jurisdiction conferred on the Adjustment Board by the Railway Labor Act.' (U.S. pages 242-244, L. Ed. pages 799-800).

"In this case, the Court has ordered plaintiffs, pending decisions by the National Railroad Adjustment Board, the [fol. 535] National Mediation Board, and Committees created by agreements which defendants allege have been violated, either to restore the service as it existed prior to October 19, 1958, or to pay to their employees adversely affected by such changes the sums of money which they would have earned if such changes had not been made. In so doing, the Court has ordered restoration of service or payments from which plaintiffs might be absolved by decisions of the National Railroad Adjustment Board, or the National Mediation Board, or the Committees established by agreements which defendants contend have been violated by plaintiffs. We respectfully submit, therefore, that such order of the Court invades the jurisdiction of those Boards and Committees under the above quoted decisions of the Supreme Court and that the Court should have limited its action to an injunction against a strike pending decisions by those Boards and Committees which action was and is authorized by the decision of the Supreme Court in *Brotherhood of Railroad Trainmen vs. Chicago R. & I, R. Co.*, 353 U.S. 30 —— S. Ct. ——, L. Ed. ——.

> *"The preliminary mandatory injunction against plaintiffs, issued without requiring security from defendants, violates Rule 65 (c) of the Federal Rules of Civil Procedure.*

"The Court's preliminary mandatory injunction against plaintiffs was issued without exacting security from the defendants which was and is required by Rule 65 (c) of [fol. 536] the Federal Rules of Civil Procedure reading in part as follows:

> "'No * * * preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered

by any party who is found to have been wrongfully enjoined or restrained.'

Plaintiffs are informed and believe and therefore state that the employees to whom plaintiffs would be required to make payments under said preliminary mandatory injunction would be unable to respond in damages to plaintiffs; and, if plaintiffs are required to comply with said preliminary mandatory injunction, they will suffer great damage during the pendency of their appeal through the payment of large sums of money to their said employees which they cannot recover, though successful in their appeal, because of the lack of such security.

"The preliminary mandatory injunction against plaintiffs was not necessary to protect the rights of employees adversely affected by the changes which were made on October 19, 1958.

"The preliminary mandatory injunction against plaintiffs was not necessary to protect the rights of employees [fol. 537] adversely affected by the changes which were made on October 19, 1958. Those employees, under agreements with plaintiffs and under the Railway Labor Act, can file with plaintiffs and progress to the National Railroad Adjustment Board time claims for any contract violations of plaintiffs. Said Board, which has exclusive primary jurisdiction, can and will determine upon such submissions whether plaintiffs have violated any agreements with said employees, or said defendants, and what sums of money, if any, are owing by plaintiffs to said employees.

"The preliminary mandatory injunction against plaintiffs destroys instead of preserving the status quo.

"This suit was filed by plaintiffs on November 6, 1958, to enjoin a strike by its engineers, firemen, conductors, brakemen, and switchmen. At that time, the changes of October 19, 1958, had already been made. The defendants' claims of agreement violations by reason of such changes has been submitted by plaintiffs to the National Railroad Adjustment Board and, in part, to the National Mediation Board and Committees created by agreements which de-

fendants claim have been violated by plaintiffs. It was the status quo on November 6, 1958, which should have been [fol. 538] preserved to protect the jurisdiction of those Boards and Committees. The preliminary mandatory injunction against plaintiffs restores and preserves the status quo prior to October 19, 1958, before the changes were made which resulted in the strike which made this action necessary. Such is not the purpose or function of a preliminary injunction.

> *"Payments required by the preliminary mandatory injunction against plaintiffs during plaintiffs' appeal would deprive plaintiffs, as to such payments, of the fruits of their appeal; and, as to such payments, would render the appeal moot and deprive the Court of Appeals of its jurisdiction to determine whether such payments should be made.*

"No security has been required from defendants for the payments which would be exacted from plaintiffs by the preliminary mandatory injunction. On information and belief plaintiffs state the employees to whom such payments would be made would be unable to respond in damages to plaintiffs. If successful in their appeal, therefore, plaintiffs would be unable to recover the sums of money paid [fol. 539] to such employees during the pendency of plaintiffs' appeal. As to such payments, plaintiffs would be deprived of the fruits of a successful appeal, the appeal would become moot, and the Court of Appeals would be deprived of its jurisdiction to determine whether such payments should be made.

"Applicable Decisions

"In addition to the authorities cited and quoted in the first section of this brief, the following decisions support plaintiffs' propositions, viz:

> Corpus Juris Secundum, Volume 36, page 287, Federal Courts, Section 294(c)(i).

> "'As a rule a supersedeas or stay will be granted by the court whenever it appears that without it the

objects of the appeal may be defeated, or that it is reasonably necessary to protect appellant from irreparable or serious injury in case of a reversal, and it does not appear that appellee will sustain irreparable or disproportionate injury in case of affirmance.'

Janssen v. Belding-Corticelli (Circuit Court of Appeals, Third Circuit), 79 F. (2d) 829.

"'The matters are here on petitions for writs of supersedeas and on motions by the respondents to dismiss the appeals.

• • • • • • •

"'At this time, we have only to decide whether or [fol. 540] not we should grant the applications for supersedeas. If we do not allow a supersedeas and the witnesses are required to testify, the questions raised by the appeals which we cannot decide until the argument on the merits will become purely academic.

"'Consequently writs of supersedeas are granted pending argument on the appeals.'" (page 829)

"Shinhort et al. v. Angle (Circuit Court of Appeals, Fifth Circuit) 90 F. (2d) 297.

"'A court of equity has inherent power to preserve the status quo pending an appeal from an order disallowing injunctive relief, and the question of whether or not such a stay will be granted is one addressed to the sound discretions of the court. Champlin Refining Co. v. Corporation Commission, 286 U.S. 210, 52 S. Ct. 559, 76 L. Ed. 1062, 86 A.L.R. 403; Louisville & N.R. Co. v. U.S. (D.C. Tenn.) 227 F. 273; Toledo Newspaper Co. v. U.S. (C.C.A. 6) 237 F. 986; Flint River Pecan Co. v. Fry (C.C.A. 5) 29 F. (2d) 457.

"'It is argued that the granting of the stay pending appeal was an abuse of discretion, and the same reasons are urged for this conclusion that were relied upon by appellants in the main appeal for the affirmance of [fol. 541] the order dismissing the bill as to injunctive relief. The question presented was not whether the court could or should grant the ultimate relief sought.

That question was being transferred to another tribunal. The question was: Upon a consideration of all the facts, would harm result to either party as a result of the granting or denial of the stay, and were there probable grounds for an appeal to protect rights which might be prejudiced by a refusal to grant the stay?' (page 298).

* * * * * * *

"'No showing is made that any prejudice has resulted, or can result, from the stay. It does not appear that the court abused its discretion, and the order appealed from is affirmed.' (page 298).

Plumb Tool Co. v. Fayette R. Plumb, Inc. (United States Court of Appeals, Ninth Circuit) 171 F. 2d 945.

"'The defendant has appealed from the judgment of contempt to this United States Court of Appeals and has petitioned this court to grant the stay order petitioned for in the district court which was denied by that court. The petition for the stay order has been submitted to us for decision.' (page 946).

* * * * * * *

"'It appears that the district court in its judgment [fol. 542] of contempt extended and enlarged upon the judgment entered under and out of the consent decree heretofore mentioned and that in the interests of justice, Rule 62(g) Federal Rules of Civil Procedure, 28 U.S.C.A., and to preserve defendant's benefits and fruits of appeal and to preserve this court's appellate jurisdiction, this court orders stayed until further order of this court, enforcement of that part of the district court's order herein quoted, wherein, only, it appears to enlarge and extend the original injunction and conditioned upon defendant's giving and having approved a bond in the sum of $50,000.00 to answer for loss of profits, damages and costs.' (page).

Hunter v. Atchison, T. & S.F.Ry. Co. (United States Court of Appeals, Seventh Circuit) 188 F. 2d 294.

Missouri-Kansas-Texas R. Co. v. Brotherhood of R. & S.S. Clerks (United States Court of Appeals, Seventh Circuit) 188 F. 2d 302.

"'A temporary injunction is a provisional remedy granted before a hearing is had on the merits; its object usually is to preserve the subject of the controversy in its *then* existing conditions—to preserve the status quo. 43 J.S., Injunctions, §31, p. 466.' (our italics) (pages 298, 306).

[fol. 543] United States v. El-O-Pathic Pharmacy (United States Court of Appeals, Ninth Circuit) 192 F. 2d 62.

"'It is of course generally the rule that when an appeal is perfected, the district court loses jurisdiction to take further action in the cause, but subdivision (c) of Rule 62 is an exception to that general rule and a recognition of the long established right of the trial court, after an appeal, to make orders appropriate to preserve the *status quo* while the case is pending in the appellate court. Newton v. Consolidated Gas Co. of New York, 258 U.S. 165, 167, 42 S. Ct. 264, 66 L. Ed. 538.' (page).

Underwood vs. Maloney (United States Court of Appeals, Third Circuit) 245 F. 2d 797.

"'An injunction * * * has been filed with this opinion in aid of our appellate jurisdiction, 28 U.S.C. § 1251, to the end that the relations of the parties to the suits * * * shall be maintained *in status quo* pending disposition of the appeals. The order filed with this opinion prohibits any disturbance in the relationships referred to. * * **

"'It will be observed that we have required security from both the appellants and the appellees for the faith-[fol. 544] ful performance of the terms of the order. This seems just since injunctions and prohibitions are laid upon both sides. A court of equity may require such security to be given.' (pages 797-798)

"For the foregoing reasons, and because the preliminary mandatory injunction against plaintiffs was issued without pleadings or supporting evidence, plaintiffs respectfully submit that an order should issue, as prayed, staying enforcement of said preliminary mandatory injunction against plaintiffs pending their appeal."

Mr. Touchstone: And for the reasons presented to the Court—and I will file this as a brief which your Honor may consider, and I have a copy for opposing counsel.

For these several reasons, and each of them, we urge our motion to stay during the pendency of the appeal, and for the Court to fix us a supersedeas bond.

•••

[fol. 545]

STATEMENT ON BEHALF OF DEFENDANT BY MR. FONVILLE

Mr. Fonville: We oppose the motion and say that no stay of this injunction should be granted.

If the Court please, I want to review what happened on the occasion of the entry of this order.

The Court will recall that the case was set for hearing on the application for a temporary injunction.

The court will recall that on the morning when the case came on for hearing on December 18th the plaintiffs sought to obtain leave to amend their complaint, and the amendments were thereupon received in the record.

That at that time the defendants made in open court an oral motion to dismiss the ccomplaint and obtained our leave to file an amended answer in response to the amendments to the complaint.

The Court will further recall that he heard argument [fol. 546] on the motion the defendants made to dismiss, in the course of which the plaintiffs saw fit to go at length into the nature of their pleadings.

The Court will recall that without taking testimony, or without evidence before the Court, because of his very understandable feeling that no strike should occur, he instructed the parties to leave the court room and return at 2:00 o'clock in the afternoon with drafts of orders which

should provide that the plaintiffs should restore the status quo as it existed prior to the issuance of the orders which provoked this controversy, and that on that condition the defendants be enjoined from striking.

As we understand the Court's order, the Court was saying to the plaintiffs, "I don't think a strike ought to occur; I think these matters ought to be decided by these boards that you have submitted these things to, according to your pleading, after you began this lawsuit. Now, I am going to enjoin these defendants on condition that you restore the status quo, so these things will remain as they were until these boards have an opportunity to decide this dispute."

The Court entered such an order.

Now, the plaintiffs want to enjoy the fruits of that order and retain the injunction the Court granted against our strike, to assert and maintain our rights, and they do not want to respond to the condition on which the Court [fol. 547] granted that injunction.

They do not want to restore the status quo, or pay, as the Court required.

The Court will recall that one of the basic reasons of our motion to dismiss the complaint was because of want of jurisdiction, in that they did not offer to restore the status quo, and in the fact that they had changed the status quo.

So they want their cake and they want to eat it, too. Now, why do I say that. They want to appeal from this order and enjoy the injunction against us, and appeal from that, and if the Court please, what they ask this Court to do, the Court needs no citation of cases, it is very plain. It is in Rule 62-c of the Federal Rules of Civil Procedure.

This Court knows, as we all know, that no injunction is automatically stayed on appeal. The stay of an injunction pending an appeal lies in the sound discretion of the chancellor. Rule 62-c says so.

It says, when an appeal is taken from an interlocutory or final judgment dissolving or denying an injunction the court in its discretion may—it doesn't say it shall—suspend, modify or grant—restore or grant an injunction during the pendency of an appeal on such terms, as to bond or other-

wise, as it considers proper for the security of the rights of the adverse party.

Now, if the Court please, it would be a gross miscarriage [fol. 548] of justice if this Court were to stay its condition on which the injunction was granted to these plaintiffs.

The equitable condition of it was to restore the status quo and pay these men.

It would shock the conscience of the chancellor, I am sure, to consider the position of the plaintiffs in this case. Furthermore, these plaintiffs are not entitled to ask any equitable action on their part because they are presently in contempt of this court.

This court entered this order on December 18th and no stay was requested.

There has been no restoration of the status quo to this date. There has not been any payment to the men until this date, and your order required that immediately.

They come in here, having disobeyed your order, and ask you to stay that order, in the face of that disobedience, pending this appeal.

They want the injunction, but they do not want to satisfy the condition the court imposed in granting that injunction.

I say to your Honor, to grant their motion to stay this injunction would be a gross miscarriage of justice, and in your discretion you should deny this motion.

***

[fol. 549] Mr. Touchstone: Your Honor, the eloquent argument of my good friend over here is based, I submit to your Honor without fear of contradiction, upon a basic fallacy. If you will read this order you will not find any such condition in it as he has described.

I think we all understood what your Honor was trying to do, and it was a laudable thing; you were trying to get the parties together, but when we came to work out this order, I challenge him to find one condition of any kind such as he stated.

Your Honor made an independent preliminary mandatory injunction to restore the status quo, or in the alternative to pay these men.

Now, there is no condition in the order, and he talks about justice. Here we have a situation where the plaintiffs have put up a bond, approved by this court, in effect, and if it is necessary they will put up another bond. If the court's order is not stayed then the appeal will be a frustrated appeal, a moot appeal, because we will have to pay out the money to these men and we know they will not restore it and we will lose the benefits of the fruit of the appeal.

Is that justice? Is that what is contemplated by these rules?

We say, of course, it is within your Honor's sound discretion, and I know your Honor, and I never heard of your [fol. 550] Honor approving something that would result in an irreparable loss, when both sides can be protected in this appeal.

He talks about these sums not having been paid. We had ten days, and we have filed our appeal, and are here now seeking a stay of the order.

His whole argument was you issued this injunction on condition that the plaintiffs do that. That was not put in the order, and I challenge him to produce it and read it to your Honor. It is not there.

***

Mr. Fonville: Let me have the order. The court knows what was put in the order, and the court can determine it. That is what I understood.

(Order read by Mr. Fonville.)

STATEMENT BY THE COURT

The Court: Gentlemen, let us go back just a little while and not only review the situation of the parties, but also review the law with which the parties are confronted.

Labor had fought for years for effective bargaining, for bargaining orders, and not for individuals, because if they bargained for one, they could discharge him, and he was too weak to compete with his employer.

So, therefore, the tendency was to enable labor to bargain [fol. 551] as an organization with the company as an organization.

About that time there were numerous strikes, and they were halted by injunctions from the court, and this called for further legislation.

You cannot ordinarily write a law to hold one man down, but what you will turn it around two or three times, and it will be holding the other fellow down, too.

So you have the La Guardia Act. A former mayor of the City of New York, while he was a Congressman, he drew a bill that labor wanted, and it was universally understood that it was to be an anti-injunction law, and that the courts of equity, although they had a perfect right under the practice of the common law to issue these injunctions, that it would be modified by the La Guardia Act, therefore, we get away from some of the rules of equity and common law under the La Guardia Act.

Let us see where—it has been construed, it must be considered along with the Railway Employers Act.

We construe the La Guardia Act to the effect that the Congress has taken away from the court the power to issue injunctions except in certain emergencies and one of those emergencies and one of those conditions is to enable the Board to perform first.

Now, one illustration of that, one I mentioned the other day, the Chicago River Railroad case, where there was a [fol. 552] strike threatened that would tie up the whole city of Chicago, and all the railroads, affecting the stockyards, and the whole thing would have been an immediate disaster, and the courts enjoined it. The Supreme Court of the United States sustained the injunction.

These injunctions are granted notwithstanding the La Guardia Act, where the La Guardia Act has not had an opportunity or has not been put into effect, and that the La Guardia Act, which provides for this railway adjustment board should be called upon to act.

Now, let us see where we are. There is a contract. We have not analyzed the contract because it is useless for us to analyze it because regardless of what conclusion we reach about the provisions of that contract we have no right to enforce its provisions or deny its provisions. Those conditions can be determined first only by the Railroad Adjust-

ment Act, and finally by the court of last resort, which the President himself may call into action, and this is the type case that is to be determined by the Railroad Adjustment Act.

This Court is without power to construe that contract, which the defendants claim has been broken by the company. If it has been broken by the company without taking it up with the Railway Adjustment Board, then when it is adjusted these men should have their pay back.

[fol. 553] Now, I believe both parties can understand that we were anxious to do all that could be done, in the light of equity, law and justice, and everybody involved, to avoid this strike.

As I said the other day I got one very bitter letter about granting this original order. Since then I have had letters of praise, and said they would not have had a job if it hadn't been for the order.

So you have men who do not want to be out, but they want to be in.

If you will look around you at the headlines of the papers, and the Airport, you will see the T & P put on an extra train to haul people that the airlines couldn't haul, and the general inconvenience taking place over the country. You can see what would have happened if this strike had gone into effect.

The labor people can see that the railroad wants to fight, but that doesn't mean it will help you to get your backs up and fight, if it can be adjusted by the Railway Adjustment Act, and that is what the La Guardia Act intended should take place.

I have some doubt about compelling, I think counsel for the railroad company is right, about this Court being able to say they have to pay these men their wages. That can only be done by the Railroad Adjustment Act. I have made [fol. 554] it a condition of the injunction. We didn't expressly say it, but the instrument itself bears that inference, that the strike is enjoined on condition these men draw their pay, and be not required to suffer because of it.

Now, there is some equity in his position, that is that the men are not able to respond in the event judgment is ren-

dered in favor of the railroad, ultimately, by the court or Board, but there is this answer to that.

As I said a moment ago, I cannot construe that contract. Nobody can construe it but the Railway Adjustment Board. The Railway Adjustment Board is clothed with the sole power of construing that act, and after they have construed it then you can have your hearings in the court, if any jurisdiction is left to the court.

Now, then, suppose that after the Railway Adjustment Board goes into it, does construe the contract, suppose they construe the contract to mean, and the law to be, that before the railway shall change or make modifications, that they ask permission of the Adjustment Board, and suppose that is the law, and suppose that is within the realm of the contract, then the court would be warranted in that case to issue the injunction, even though it was not a condition to granting the injunction, because without permission of the Railway Adjustment Board you have deprived these men of the money, and you have deprived them of their jobs and [fol. 555] the opportunity to work.

Now, this matter can be smoothed out, as I said in the former meeting. There is a want of disposition to smooth out things, I am afraid.

There are two ways of doing this. One way would be to pay the money and try to hurry up the decision by the Board, and the other way would be for the court to require the defendant company to give bond to pay these men their wages in the event they lose the case before the Adjustment Board, or unilaterally before the court. That is not an unjust course and it is legal, but you have ten men here that you threw out of employment and you took their jobs away from them, when the Railway Adjustment Board might have told you in advance not to do so.

I am a little uncertain. Of course, I could just wash my hands of it and say, "Go on with your strike", but I don't think I will.

I will withhold my decision until I can read this over, but I feel that this strike should not occur if justice can be made to prevail without it.

•••

Mr. Willis: Your Honor, if you will recall, we suggested if they paid this money as we go along, we will agree to appoint an arbitrator, and the court can appoint an arbitrator, and the arbitrators can appoint one and we can [fol. 556] have an arbitration. It is not right for these men to wait six years to have this adjudicated by the Board, and it won't take that long if we have arbitration.

They talk about us not being able to respond. Where do they get the idea we cannot respond?

Anyway, in equity we are entitled to live during the time they are before the Boards which they have now gone to, instead of having the matter arbitrated. Now, they want to hold us up six or seven years, and they don't want a strike.

The Court: It would be very unfortunate if this Board should hold it up that length of time.

Gentlemen, I take it that there is no hope of your getting together and that you are determined to fight.

Nothing stands between you except this court, and I am going to think carefully on it.

Mr. Fonville: I would like to say that at the beginning of this controversy, as I understand, I believe the carrier took the position that there was nothing to negotiate.

After the matter came up in court, negotiations, at the urging of the court, took place, and after the order the other day, December 18th, I believe the representatives of the Brotherhood and representatives of the railroad have met, and at that time they were not able to resolve this controversy, but there is communication between the carrier and the Brotherhoods, they are on speaking terms.

[fol. 557] I do not perceive in the attitude of either side a determination not to make some attempt to settle the case.

The time, I am informed, this procedure takes before the Railroad Adjustment Board is not because of any feet dragging, but because of the tremendous backlog the Railroad Adjustment Board has.

The men who are familiar with this tell me that the timetable now on an appeal before the Board is six to seven years. That is not the fault of anybody holding back, but because the backlog in the Board is such it takes that length of time.

The Court: Gentlemen, I will write a letter with the order attached to it.

The fact that the Board, to which the law requires the matter to go is far off, and its conclusion is far off, must necessarily be considered here, and if there are any negotiations going on I feel like it will ultimately result in an agreement.

Unless you do reach some effort to get together the court might step out from between you.

For the present we will continue this hearing, and you may draw an order denying this motion on the ground that the court put the provision in the order hoping to effect an adjustment of the parties.

***

[fol. 558] Reporter's Certificate to foregoing transcript (omitted in printing).

[fol. 559] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS,
DALLAS DIVISION

[Title omitted]

TRANSCRIPT OF HEARING of January 13, 1959

Be It Remembered that on the 13th day of January, A.D. 1959, before the Honorable T. Whitfield Davidson, United States District Judge, the following proceedings were had in the above styled and numbered cause:

[fol. 560]

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Fonville: If the Court please, the Court will recall that on January 5th the Court held a hearing on the motion of the plaintiffs to stay the injunction, what they refer to as an injunction against them, requiring them to restore the status quo or make the payments, as provided in the order of December 18th, pending an appeal by them of that portion of the order.

At the conclusion of the hearing the Court announced he declined to grant the stay and instructed me to draw an order and present it to the Court.

I now apologize for not presenting it to the Court on that day. At the latter part of the afternoon of that day I had prepared a draft of the order which we felt recited the Court's findings, and order, and I was advised by Mr. Hart Willis and Mr. Touchstone requested we not submit it, since he hadn't had a chance to see it until Tuesday, the day following, and the 5th was Monday.

The request was that we withhold the order until Mr. Touchstone could return to town from an engagement he had at Texarkana, and we held it up for that purpose.

In the meanwhile, someone representing the plaintiffs went to New Orleans and obtained the stay of the injunction at New Orleans.

[fol. 561] Mr. Touchstone: The stay of the payments.

Mr. Fonville: Now, the reason the order was not submitted to the Court on Wednesday was because, unfortunately, the Court had become ill and was not available thereafter.

I now submit the order which the Court instructed us to draw and present. It has been presented to Mr. Touchstone and he is not agreeable to the form of the order and will request the entry of a different order.

I present now the order which I feel is the order the Court intended on January 5th.

The Court: Does Mr. Touchstone have one also?

Mr. Touchstone: Yes, your Honor. I had to go to the Court of Civil Appeals at Texarkana and Mr. Fonville has correctly recited what took place.

The question here is, we are unable to agree, the lawyers are, on the form of the Court's order. We are filing a brief motion presenting the orders which we would like to present to the Court.

The Court: I might read both of the proposed orders, and while you are on your feet you might state the difference.

Mr. Touchstone: Our order merely denies our motion to stay and does not attempt to go into the substance of the order of December 18th. Our motion was for a stay of the

[fol. 562] mandatory injunction which the Court denied, and we think that a simple order carrying out the Court's wishes to deny that is all that is called for.

The original order is in two parts. The first part is a mandatory injunction ordering the plaintiffs to restore the status quo, or, in the alternative, to pay these men. We have appealed from that and that is now in the jurisdiction of the United States Court of Appeals.

Then the order at the end of that portion makes a paragraph, and it says "It is further ordered," and then perpetuates the injunction pending a hearing. The Court said the hearing would be continued, and he perpetuated the injunction.

Our point is that in the Court's order there was no condition. It was an order we worked out in the Court's chambers and there was no condition stated in that order, and our order here is one that sets out what we think was the Court's ruling to deny the stay. In other words, I can't understand this order here. Your Honor's order of December 18th was only about two pages. They have an order denying the stay of about four pages. I don't understand why all of this is in there.

We have a motion here, and it simply stays it, and it is what the court did, deny the stay.

The Court: I believe the easiest way for me to understand the controversy is to read the papers.

[fol. 563] Mr. Willis: I would like to make a few remarks very briefly when you get through reading both of them.

The Court: All right, gentlemen, I get your respective views. It might be you are not as wide apart in the statement of fact as perhaps you feel you are. I will hear from you.

Mr. Willis: If Your Honor please, you will recall that there have been no facts introduced in the record here, but statements have been made by the attorneys for both sides and there have been no misrepresentations but we feel that in order to protect this court that this Order should be embraced in the record on appeal. This court should be protected by permitting us to state what the background of this situation is. In other words, they want to go up with just an order overruling it, and we think that for your protection,

for protection of what the court has done, that when we get down to that Appellate Court we should have a statement from Your Honor such as we have prepared here in order to protect us and the court.

Certainly there could be no harm done and it is certainly up to the Court's discretion. We have had several hearings on this matter and we don't want to go down there and have just this little order and they will say, "What does the judge mean?"

Mr. Fonville: I would like to add an observation to what Mr. Willis has said.

The Court will recall that at the hearing on January [fol. 564] 5th in the arguments for and against the granting of the stay of the part of the Order of the Court requiring the restoration of the status quo, or the payments required in the Order, I made the point that the Court had granted the injunction against our striking on the condition and only on the condition that the Plaintiffs do equity and restore the status quo, or exercise the election the Court gave them of making certain payments the same as if the status quo had been restored.

By status quo, I refer to the status quo before their orders were issued which invoked the strike.

The Court will recall that Mr. Touchstone, representing the Plaintiffs, argued in response to that point the position that these Plaintiffs take, that this Court didn't grant one injunction in one order, he granted two independent separable injunctions. One against us striking and one independently of that against their--requiring them to restore the status quo.

Now, the Court heard my argument and my statements as to what I thought the Court intended in its Order was based on what I understood when that Order was entered December 18.

Believe me, when the Court instructed us to leave the courtroom and come back with orders at 2:00 o'clock we discussed it in our council very much, what the Court was doing, and we concluded he was granting an injunction against us on condition that these people do equity, that the [fol. 565] Plaintiffs do equity. I so stated to the Court on January 5th, and the Court will recall Mr. Touchstone argu-

ing that was not the case, and challenged me to point out in the Order of December 18 where there was any conditions on the injunction against us. At that point I said in my argument, and the record will support me, that the Court would know what he intended in that order. That is what I understood him to intend; and at the conclusion of that hearing the Court announced that that was exactly what he intended, that he had intended that this restoration of the status quo be a condition of the injunction against us.

My Order that I presented to the Court this morning is drawn that way.

As I recall the instructions of the Court, when he said to draw this Order, he said to put in there that in an effort to get these parties together the Court directed the Order of December 18. Now, that is my understanding and if my understanding is correct I think it should go on the record here this clarification. Evidently it isn't clear to Mr. Touchstone because he says the Court didn't do it on condition; he says the Court enjoined us from striking and quite independently from that enjoined them to restore the status quo. I think we are entitled to have the Order entered as the Court had it in mind.

Mr. Touchstone: I will be very brief. There is no need to speculate, if the Court please, on the conditions of Your Honor's Order of December 18. I have it in my hand. The [fol. 566] first two pages of the Order are a mandatory injunction to the Plaintiff railroad to restore the status quo, or, in the alternative, to pay these men. Now, that was worked out here after 2:00 o'clock. Your Honor very patiently let us work with you and we spent an hour and a half or two hours on it.

The Court: I thought we had done some good.

Mr. Touchstone: I thought so too. That part off the Order ends on the bottom of the second page. Period. Then the Order says this, without any reference to what condition, or without regard to the mandatory injunction, it says: "It is further ordered that the Defendant and employees of Plaintiff represented by Defendants be, and they are hereby, enjoined from striking during such period on account of the controversy and dispute involved herein between Plaintiffs. It is further ordered that the present

bond on file herein shall be continued in effect as the injunction bond."

Now, there isn't the slightest indication of any condition in this Order of December 18. We all worked it out. It seemed to meet the approval of everybody, and of the important men who appro ed it, Your Honor. And Your Honor signed it. I renew my challenge that there is no condition in it.

Our motion to stay, Your Honor, did not affect the conditions of this Order, but merely asked for an enforcement of a stay order pending appeal, and that Your Honor denied. Therefore we say there is nothing before the Court [fol. 567] except either a granting or a denial of the stay order, and as to the mandatory injunction, Your Honor could not do indirectly what you can't do directly, and that is now in the jurisdiction of the United States Court of Appeals.

Those first two pages dealt with the mandatory injunction and we say there is no condition in the Order of December 18, and that a simple order denying the motion to stay is all that is called for.

Oral Ruling by the Court

The Court: Any other discussion?

Gentlemen, as I have said here before, in the early years of my practice there was never but one side to a lawsuit, and I believe some of you are taking that view with reference to this litigation here.

Perhaps if you would serve on the bench awhile you might see that the other fellow had some grounds in the matter.

I feel that on that night when my rest was disturbed by two visitors and I entered this temporary order that I did a good deed. I wasn't satisfied to act so hurriedly as I found it necessary to act that night, as the circumstances called for. So immediately upon returning to Dallas I had you parties together again and went into it more fully. I feel that we have been over a month now at this and have steered the matter in such a course that neither of you, up to now, have been grievously hurt or injured.

Mr. Willis: We have no desire to strike. Regardless [fol. 568] of what the order says we have no desire to strike. I suppose that is what they are afraid of, but we are not going to do that.

The Court: Whereas if I had granted that Order and the strike had gone on in effect you can see in a smaller way what happened in the American Airways strike. As I observed on a former occasion a strike is a type of warfare in commercial transactions, and usually the men that strike are very much opposed to a shooting war. I am with them if it can be avoided, and usually it can be avoided. Our war that we call the Civil War was one of the most useless wars in history. Brazil was an empire at that time and freed her slaves without war. England freed her slaves without war. Czarist Russia freed her slaves, and I think we were more capable of doing it than any of them. We needed a little more time.

So I think both sides are better off by having this matter carried this far along, even though we can't seem to agree about anything.

Now, I hope that one of you—I don't know which one will take a-hold of it, but one side or the other, I feel, must, under the terms of the Court's Order—the company is appealing one side of it and the Defendant the other—will endeavor to ascertain the position of the Railroad Adjustment Board, with reference to its ability to hear this case. It was stated in the hearing here that they were six years behind. We know that justice delayed is often justice denied, [fol. 569] and if this matter can't be heard by the Railroad Adjustment Board under six years it is justice denied. If justice is denied then the railroad employees have no forum to which they may appeal, or the railroad company, on its side may have no forum to which it could appeal, and if there is no forum or no court to which the controversy could be had, then neither side would have a remedy at law except through the equity powers of the judge.

If that fact can be found, and the evidence should warrant that, in the event this case is reversed by the Circuit Court, which, under the position it is now taken, it may be—the court could, I believe, take up and construe the contract which is the basis of this controversy and decide the

matter in lieu of and in place of the Railroad Adjustment Board, if no other arbitration is possible in the premises.

If one will study the Railway Adjustment Act, and then the General Labor Act of the New York mayor while he was in Congress, you will see that the latter act was to do away with injunctions, as they were called, government by injunction, and it was made almost impossible for a judge to grant an injunction against a strike. However, conditions arose, as decided by the Chief Justice lately, conditions do arise that make it necessary to prevent such a situation.

Now, if the Railway Adjustment Board can't act on this matter then I think we should clear that up while this is going up, and it will be the purpose of this court to keep [fol. 570] you people—to keep the railroad running and preserve the rights of the operators as nearly as possible until some adjustment can be had.

It is our view that the Court is not clothed with the power to construe that contract until it is made to appear that there is no other Board that will or can construe it.

It was the policy of the law that these controversies should be worked out mutually. Failing in that, that they should be arbitrated; and failing in voluntary arbitration, that they should be compulsorily arbitrated, and a board was created for that purpose which was the Railway Adjustment Board. So the Railway Adjustment Board should determine what is in that contract, and who is right as to whether this contract has been violated or not, and whether or not these men have any rights or not. The law has put it there. And the La Guardia Act has made it such, but since the La Guardia Act has not been used, why, then we think the equity powers of the court is to keep you people going until you do use it.

Getting back to the first situation, I was interested in the argument of Mr.—your co-counsel from Denison, Mr. Clinton, when he said, "We have a right to run our road and if we need to reduce the force, we have a right to; if we need to change division points, we have a right to do it."

That comes back to the old, established rights of men to run their business, and I am very much of that line of [fol. 571] thought. But the Railway Adjustment Board is

created to run it a different way and that is the law of the land. That Railway Adjustment Board is to let you have your contract by collective bargaining, and then if you have a dispute, instead of the company firing the men, singly or in a body, to work out that dispute. It says you do it by mutual agreement. You do it by arbitration. If you won't do it by voluntary arbitration you do it by involuntary arbitration, and a board has been created for that purpose called the Railway Adjustment Board.

Then, finally, there is another board that, according to the view of some judge, that it is the President's final way of stopping a big strike, or one that can't be otherwise stopped, and then when you get through with that you find that even the President doesn't have any power, and he will have to go back to the court like the judge did in Arkansas.

So, I feel, gentlemen, that if we are going to follow literally the Railway Adjustment Act that before the changes were made permission should have been had from the Railway Adjustment Board, and to act without its counsel and without its sanction and permission you put us in this kind of a position. Here is a piece of property. The possession of it is of value. Two men claim it. They know they are going to have a trial over the rights of the property. And the effect that, in the higher court, which will maybe take three or four years, maybe, if it is in a court like in New [fol. 572] York or Chicago or Los Angeles, or the Adjustment Board, where it takes six years to dispose of it, one fellow, considering the importance of time moves in and gets in possession. Now, should he be allowed to remain in possession during the whole period of the controversy? You have almost an analogic situation here. The company changed the division point, according to what we understand from your argument, changed the division point and let ten men out of employment without permission from the Railway Adjustment Board or without arbitration or without mutual agreement.

Now, the railroad advises that the men contend that that is a violation of their contract. And not the ten men, but all of the other employees of the railroad threaten to go on strike in sympathy with the ten men. That was what we had down yonder that night.

We feel like that the rights of these ten men can be adjusted and the railroad can be running and that is what we hoped to be able to see done, and that was what caused us to put this second clause in here. We did contemplate that at the time, and it was brought to our attention that the matter was to be fought out immediately and that these men were to bring some kind of action to collect their wages in court, or otherwise, and additional action was needed.

Both sides brought up amendments and notice of appeal had been made and I questioned the Court's ability to act on the matter since notice of appeal was made, but since both sides were seeking amendments, I thought the Court, [fol. 573] as a third party to the controversy, might amend his judgment as well as the lawyers could amend their pleadings, and we have, as we originally contemplated, indicated at the time that these men—in other words, that the status of the railroad operation while this long stay is to be had should be restored to where it was before the change was made, and if it wasn't convenient to make that change, then the salary of these men be paid.

I think if you will take the stenographer's notes of my remarks made in open court, and then take the remarks made here in chambers, I will call your attention to one particular point. When the manager of the railroad, the Vice-President here with us, was asked in open court about these men and how their salaries could be arranged at the time we had it under discussion—the stenographer's notes of what was said at that time, and the stenographer's notes of what we said in the court will thoroughly show that we didn't mean for these ten men to stay outside during six years while the Adjustment Board worked this thing out.

We want to see some action done to hurry up this Adjustment Board. If it ceases to function because it is bogged down, then the Court may decide it has jurisdiction and give one side or the other a chance to make a second appeal after this one is over.

I have read the first Order over and I think everything in there—they may write differently in the Circuit Court—but that was the Court's observations. It is only a resume [fol. 574] of it. It might have been stated in fewer words, but I think everything in that Order was embraced in the

Court's observations there in the Courtroom and the Court's observation here in chambers.

So we will enter the Order asked for by the Defendant in the matter.

Mr. Touchstone: Your Honor will then just deny our motion and sign it, please, sir, and note that we except?

The Court: Yes, sir. If I can carry this case along until both sides realize that there are two sides to it, I think we have done very fine work.

Mr. Touchstone: One thing I might mention, the attorneys on both sides have gotten a letter from the clerk of the United States Court of Appeals, Fifth Circuit, and that letter tells us, that letter requires that we have a record filed in 15 days in the United States Court of Appeals, and that our brief must be there in 20 days, then they will give the other side 20 days. In other words, it seems to be the earnest desire of the clerk, so expressed in his letter, for a speedy disposition of this appeal, and I understand that there is some idea upon the Court's part that it may be referred to a special panel in order to get speedy relief.

The Court: I think the Court should naturally view a case of this kind in that manner.

Mr. Fonville: If Your Honor please, you will observe that the date on that order was blank. The date that the [fol. 575] Court directed that order was the 5th of January.

The Court: You have it marked here dated. I am going to change it to read entered on January 13, and I may enter also this interlineation "as announced in open court on January 5th."

Mr. Willis: When I said awhile ago we were not going to strike, I meant we were not going to strike during the pendency of the appeal. I just want that straight in the record.

(Whereupon court was adjourned.)

[fol. 576] Reporter's Certificate to foregoing transcript (omitted in printing).

[fol. 577] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 578] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, et al.,
Appellants,

vs.

THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS, et al.,
Appellees,

MOTION FOR STAY ORDER—filed January 6, 1959

Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, appellants in the above entitled and numbered cause, move the Court for an order staying, during the pendency of their appeal, the enforcement of the following part of the order entered December 18, 1958, by the District Court of the United States for the Northern District of Texas, Dallas Division, in Civil Action No. 8061 entitled "Missouri-Kansas-Texas Railroad Company, et al., Plaintiffs, vs. The Brotherhood of Locomotive Engineers, et al., Defendants", to wit:

> "The Court is of the opinion * * * that, pending settlement of the controversy as a result of the arbitration looking to settlement, or determination of the controversy by decisions in the submissions, as aforesaid, plaintiffs should restore the conditions affected by plaintiffs' General Orders 119 and 120, referred to in the complaint, as amended, to the conditions which existed prior to the effective date of such orders, and maintain such conditions during such period, or make the payments hereinafter specified * * *".
>
> "It Is, Therefore, Ordered that * * * until the controversy between plaintiffs and defendants herein shall have been settled by and between the parties, or until decisions on the various submissions made by plaintiffs, as set out in the complaint, as amended, have been rendered, and that during such period plaintiffs restore the conditions which were affected by their Gen-

eral Orders 119 and 120, referred to in the complaint, as amended, to the conditions which existed before such orders became effective, and maintain such restored conditions during such period. In the alternative if the plaintiffs do not elect to restore and maintain the conditions as ordered aforesaid, then until the matters have been finally determined in the boards hereinabove mentioned, the plaintiffs will pay to the employees of the plaintiffs affected adversely by plaintiffs' General [fol. 579] Orders 119 and 120 the same amounts of money that they would have paid had the changes made by plaintiffs' General Orders 119 and 120 not been made."

"In any controversy as to what this pay may be, it may be determined by the average annual wage earned by such employee or employees in the affected service during 1957 adjusted for wage increases put into effect subsequent to January 1, 1958. Any amount payable under this order shall be reduced by the amount which is payable by plaintiffs to the Railroad Retirement Board for unemployment compensation received by such employees."

On December 29, 1958, appellants filed their notice of appeal from said part of said order. A copy of said order of December 18, 1958, is attached hereto, marked "Exhibit No. 1", and made a part hereof. On that exhibit, said part of said order from which appellants have appealed has been italicized. In support of this motion, appellants respectfully show:

I

On December 29, 1958, appellants filed in the District Court a motion for an order staying enforcement of said part of said order of December 18, 1958. Said motion was denied by order of the District Court entered January 5, 1959.

II

As stated in said order of December 18, 1958, and as shown by the amendment and supplement to apppellants' complaint, as amended, and the exhibits attached thereto,

filed on December 18, 1958, pursuant to an order of that date granting leave to file, appellants have submitted this entire controversy to the National Railroad Adjustment Board, First Division, and appellants have submitted portions of this controversy to the National Mediation Board and appellants have submitted portions of this controversy to National Committees and Disputes Committees created by national and mediation agreements which appellees allege have been violated by appellants, and which appellants deny. Those submissions are now pending before said Boards and Committees.

III

This stay order is requested and appellants respectfully submit that it should be granted for each and all of the following reasons:

[fol. 580] (1) The part of said order of December 18, 1958, from which appellants have appealed is a preliminary mandatory injunction against appellants issued by the District Court without requiring security from appellees in violation of Rule 65 (c) of the Federal Rules of Civil Procedure reading in part as follows:

> "No * * * preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained."

If appellants are required to comply with said part of said order during the pendency of their appeal, they will suffer great damage during such period through the payment of large sums of money to their said employees and, if appellants successfully prosecute their appeal, they will be unable, through lack of such security, to recover such damages and costs.

(2) Said preliminary mandatory injunction was issued by the District Court against appellants without pleadings or evidence to support its issuance.

(3) Said part of said order is not necessary to protect the employees adversely affected by the actions of appellants. Said employees, under contracts with appellants and under the Railway Labor Act, can file with appellants and progress to the National Railroad Adjustment Board time claims for any contract violations of appellants. Said Board, which has exclusive jurisdiction, can and will determine upon such submission whether appellants have violated any agreements with appellees and what sums of money, if any, are owing by appellants to claims as a result thereof.

(4) Enforcement of said part of said order would defeat the exclusive primary jurisdiction of the National Railroad Adjustment Board to which appellants have submitted this entire controversy.

(5) Enforcement of said part of said order would defeat any jurisdiction of the National Mediation Board and any jurisdiction of the Committees to which appellants have submitted parts of this controversy.

(6) Enforcement of said part of said order pending appellants' appeal would defeat the jurisdiction of this court [fol. 581] to determine whether any sums of money should be paid to any of appellants' employees pending decisions by said Boards and Committees.

(7) Enforcement of said part of said order would destroy the status quo at the time of the commencement of this action, which a preliminary injunction is designed to preserve.

(8) Enforcement of said part of said order would restore and preserve the status quo which existed before said changes were made by appellants and before the strike which made this action necessary and said part of said order therefore constitutes an adjudication of the merits of this controversy on appellants' application for a preliminary injunction.

(9) Appellants are informed and believe and therefore aver that the employees of appellants to whom appellants would be required to make payments under said part of

said order during the pendency of appellants' appeal would be unable to respond in damages to appellants and appellants would be unable to recover the amount of such payments from said employees, or any of them.

(10) The injuries, loss and damage to appellants, and each of them, by reason of said payments to appellants' said employees, will be immediate and irreparable and for which appellants, and neither of them, have any adequate remedy at law.

(11) Appellants are informed and believe and therefore aver that, unless said stay order is issued, appellees will take immediate steps to have execution issued or otherwise compel immediate compliance by appellants with said part of said order.

IV

(1) Said Civil Action No. 8061 was brought by appellant Railroad Companies to enjoin a strike of appellants' engineers, firemen, conductors, brakemen, and switchmen. Without notice to appellant Railroad Companies, The Brotherhood of Locomotive Engineers, The Brotherhood of Locomotive Firemen and Enginemen, The Brotherhood of [fol. 582] Railroad Trainmen, and The Order of Railway Conductors and Brakemen, appellees, ordered said employees of said Railroad Companies to strike and cease work for said Railroad Companies at 6:00 o'clock A.M. on November 6, 1958. All of said employees did strike and cease work for said Railroad Companies at such time except those who were then manning trains between terminals and they did strike and cease work for said Railroad Companies on said date as soon as they reached such terminals.

(2) Said strike of said employees completely paralyzed all train operations of said Railroad Companies over 2919 miles of track extending from St. Louis and Kansas City, Missouri, on the north Oklahoma City, Oklahoma, and to Houston and San Antonio, Texas, on the south. It also completely paralyzed all yard operations of said Railroad Companies and all of their switching service to industries at and between those points.

(3) Said strike stopped the rail transportation of United States mail by said Railroad Companies; it stopped the transportation by said Railroad Companies of passenger and freight in interstate commerce and in intrastate commerce; it stopped switching service by said Railroad Companies to more than 3600 industries which are served exclusively by them; it stopped switching service by said Railroad Companies to more than 1300 industries which are served by said Railroad Companies and other railroads; it stopped switching service by said Railroad Companies to hundreds of team tracks and freight stations serving thousands of industries; and it stopped the interchange of cars between appellants and many other railroads at hundreds of interchange points.

(4) Said strike was stopped by a temporary restraining order issued by the District Court on November 6, 1958. On stipulations of the parties, orders were entered extending said temporary restraining order to December 18, 1958, and on that date the District Court entered an order, a copy of which is attached hereto as Exhibit No. 1, enjoining appellees and employees of appellants from striking pending decisions by the National Railroad Adjustment Board, First Division, the National Mediation Board, and the National Committees and Disputes Committees created by said national and mediation agreements, on appellants' said submissions. Said order also contained said mandatory injunction against appellants from which they have appealed.

[fol. 583] (5) The lines of railroad involved in said Civil Action No. 8061 and in appellants' appeal are shown in red on the map, marked "Exhibit No. 2", attached to and made a part of this motion. The portion thereof between Wichita Falls, Texas, (North Yard) and Forgan, Oklahoma, over which this controversy arose, is emphasized by parallelin green lines. This line, 302 miles in length, is the Western Subdivision of the Southern Division of said Railroad Companies' lines of railroad.

(6) This 302-mile line now constitutes and always has constituted a separate seniority district for said Railroad Companies' engineers, firemen, conductors and brakemen and each of such employees holding seniority on such di

trict now has and always has had the right to exercise such seniority anywhere on such district and to perform any needed service over all or any part of said district to which he is or was entitled by virtue of such seniority.

(7) Prior to October 19, 1958, way freight crews on this line were assigned as follows:

Two crews between North Yard (Wichita Falls, Texas) and Welon (Altus, Oklahoma), a distance of 75.9 miles, daily except Sunday, with North Yard the home terminal for both crews, and with Sunday layover at North Yard for one crew and at Welon for the other crew.

One crew from Welon (Altus, Oklahoma) to Elk City, Oklahoma, and return, a distance of 58.3 miles in each direction, daily except Saturday, with Welon the home terminal and with Saturday layover at Welon;

One crew from Elk City, Oklahoma, to Guest (Woodward, Oklahoma), a distance of 84.8 miles, on Mondays, Wednesdays and Fridays, and from Guest to Elk City on Tuesdays, Thursdays and Saturdays, with Elk City the home terminal and with Sunday layover at Elk City, and

One crew from Guest (Woodward, Oklahoma) to Forgan, Oklahoma, a distance of 83.2 miles, on Mondays, Wednesdays and Fridays, and from Forgan to Guest on Tuesdays, Thursdays and Saturdays, with Guest the home terminal and with Sunday layover at Guest.

Such way freight assignments, or similar way freight assignments between North Yard (Wichita Falls, Texas) and Forgan, Oklahoma, have been in existence for more than twenty-five years.

[fol. 584] (8) Effective at 12.01 A.M. on October 19, 1958, said Railroad Companies rearranged assigned way freight service between North Yard (Wichita Falls, Texas) and Forgan, Oklahoma, as follows:

Assigned two wayfreight crews to operate between North Yard (Wichita Falls, Texas) and Elk City, Ok-

lahoma, a distance of 134.2 miles, daily except Sunday, with North Yard the home terminal of both crews, and with Sunday layover at North Yard for one crew and at Elk City for the other; and

Assigned one wayfreight crew to operate from Elk City, Oklahoma to Forgan, Oklahoma, a distance of 168 miles, on Mondays, Wednesdays and Fridays, and from Forgan to Elk City on Tuesdays, Thursdays and Saturdays, with Elk City the home terminal and with Sunday layover at Elk City.

This rearrangement of way freight service was made in accordance with General Order No. 119 of said Railroad Companies dated October 2, 1958, a copy of which, marked "Exhibit No. 3", is attached to and made a part of this motion.

(9) Prior to October 19, 1958, North Yard (Wichita Falls, Texas) was the home terminal and Altus, Oklahoma, and Forgan, Oklahoma, were the bulletined away-from-home terminals for unassigned crews in through freight service between North Yard (Wichita Falls, Texas) and Forgan, Oklahoma. Effective at 12.01 A.M. on October 19, 1958, said Railroad Companies abolished Altus, Oklahoma, and Woodward, Oklahoma, as away-from-home terminals for unassigned crews in through freight service, established Elk City, Oklahoma, as an away-from-home terminal for such crews, leaving North Yard (Wichita Falls, Texas) as the home terminal and Forgan, Oklahoma, as an away-from-home terminal for such crews. This change in away-from-home terminals was made in accordance with General Order No. 120 of said Railroad Companies dated October 2, 1958, a copy of which, marked "Exhibit No. 4", is attached to and made a part of this motion.

(10) North Yard (Wichita Falls, Texas) now is and always has been the home terminal for unassigned crews in through freight service between North Yard and Forgan, Oklahoma, and North Yard (Wichita Falls, Texas) now is and always has been the only point where an extra board has been maintained for way freight crews and unassigned through freight crews operating between North Yard (Wichita Falls, Texas) and Forgan, Oklahoma.

(11) Assigned way freight crews now handle, and they always have handled, all of the traffic between North Yard [fol. 585] (Wichita Falls, Texas) and Forgan, Oklahoma, except, during the grain seasons in May and June of each year, unassigned crews in through freight service are called as needed to handle the overflow wheat which cannot be handled by way freight crews, and, when so called, unassigned through freight crews operate over all or any portion of the line without changing crews except in rare instances where an available crew is used out of an away-from-home terminal under the first-in first-out rule.

(12) This line has been recently dieselized. Prior thereto all traffic was handled by steam locomotives which were capable of only short runs, making it necessary to have more terminals. This resulted in considerable terminal delays to through traffic because the requirements of local service made it impossible to arrange through connecting schedules. These delays resulted in the loss of traffic, principally through diversion to trucks. To overcome such losses, it was necessary to expedite the movement of traffic by extending runs and reducing the number of terminals, thereby eliminating all unnecessary terminal delays. This was made possible through the use of diesel power. These were the changes made effective on October 19, 1958.

(13) There is no provision in any agreement between said Railroad Companies and said Brotherhoods and Order, or any of them, which prohibited said Railroad Companies from making such changes. On the contrary, such changes were authorized by the following provisions of agreements with said Brotherhoods and Order, viz:

Agreement with
The Brotherhood of Locomotive Engineers
(Effective October 1, 1918)

"Article 34"

"The rights to regular engines, also the right and preference to regular runs will be governed by seniority in service on the respective districts to which engineers may be assigned.

"No freight run or yard engine of less than six days per week will be considered for regular assignment and engineers on all such assignments will be paid for all work days not used. *Five days' notice will be given before* road service of this kind is inaugurated or *terminal is changed.* It is understood that fixture switch engineers hold seniority only in yard service." (page 29) (Our italics)

[fol. 586] "Article 35"

"Should service be reduced, preference of runs will be governed by seniority on the respective district; when any run is created or vacant on district, the senior engineer on such district will have the right to such run. Should he decline to accept it, or fail to ask for it within ten days, after such vacancy occurs, he will forfeit his right to such run until it again becomes vacant, and it will be open to each engineer who is younger in service in accordance with above provisions.

"A run will be vacant when terminal is changed to the extent of two miles or more or when vacated by the engineer holding it, or when the regular time or mileage is changed to the extent of 10% or lay over changed as much as four hours." (page 30) (Our italics)

"Article 11"
(As amended by National Agreement dated August 11, 1948—page 15)

"(a) Engineers in pool freight and in unassigned service held at other than home terminal will be paid continuous time for all time so held after the expiration of sixteen hours from the time relieved from previous duty, at the regular rate per hour paid them for the last service performed. If held sixteen hours after the expiration of the first twenty-four hour period, they will be paid continuous time for the time so held during the next succeeding eight hours, or until the end of the second twenty-four hour period, and similarly for each twenty-four hour period thereafter.

"(b) Should an engineer be called for service or ordered to deadhead after pay begins, the held-away-from-home terminal time shall cease at the time pay begins for such service or, when deadheading, at the time the train leaves the terminal, except that in no event shall there be duplication of payment for deadhead time and held-away-from-home terminal time.

"(c) Payments accruing under this rule shall be paid for separate and apart from pay for the subsequent service or deadheading.

"(d) For the purpose of applying this rule, the *railroad will designate a home terminal* for each crew in pool freight and in unassigned service." (Our italics)

Agreement with
The Brotherhood of Locomotive
Firemen and Enginemen
(Effective October 1, 1918, with revisions to
November 1, 1957)

"Article 40"

"(a) When any run is created or vacant on a district, the senior fireman on such District will have the right to such run. Should he fail to make application or bid for such run within five days after such vacancy is posted, except in the case of sickness or absence, he will forfeit his right to such run until it again becomes vacant, and it will be opened to each fireman who is younger in service in accordance with the above provisions, provided, that when a fireman exercises the privilege of taking a run created or made vacant during his sickness or absence, the run will not otherwise be reopened.

"(b) *A run will be considered vacant when terminal is changed to the extent of two or more miles,* or when vacated by the fireman holding it, or when the time or mileage is changed to the extent of 10 per cent, or when the lay over is changed as much as four hours. This

last provision not to apply to yard engines." (page 40) (Our italics)

[fol. 587] "Article 11"

"Held Away From Home Terminal"

"(a) (National Agreement, August 11, 1948) Firemen, and helpers on other than steam power, in pool freight and in unassigned service held at other than home terminal will be paid continuous time for all time so held after the expiration of sixteen hours from the time relieved from previous duty, at the regular rate per hour paid them for the last service performed. If held sixteen hours after the expiration of the first twenty-four hour period, they will be paid continuous time for the time so held during the next succeeding eight hours, or until the end of the second twenty-four hour period, and similarly for each twenty-four hour period thereafter.

"(b) Should firemen, or helpers on other than steam power, be called for service or ordered to deadhead after pay begins, the held-away-from-home terminal time shall cease at the time pay begins for such service or, when deadheading, at the time the train leaves the terminal except that in no event shall there be duplication of payment for deadhead time and held-away-from-home terminal time.

"(c) Payments accruing under this rule shall be paid for separate and apart from pay for the subsequent service or deadheading.

"(d) For the purpose of applying this rule, *the railroad will designate a home terminal* for each crew in pool freight and in unassigned service." (page 17) (Our italics)

Agreement with
The Brotherhood of Railroad Trainmen and
The Order of Railway Conductors and Brakemen
(Effective November 1, 1929, with revisions
to April 1, 1954)

"Article 10"

"Wayfreight and Mixed Train Service"
"Rates of pay effective December 16, 1953"

• • • • • • •

"(f) No changes will be made in the above runs (between Wichita Falls and Forgan), nor number of crews assigned to them, unless business or changed conditions justify it, nor will terminals be changed, or runs rearranged, without ten (10) days' notice * * * " (page 15)

"Article 45"

• • • • • • •

"(e) Seniority will govern the preference of assignment in service, provided that senior trainmen declining closed runs will forfeit their rights to same until vacancies occur, except in reducing the force, the youngest man will be reduced from the service.

• • • • • • •

"(g) Trainmen holding closed runs who are displaced by their seniors or whose runs have been abolished, will have the right within ten (10) days to displace any junior men.

• • • • • • •

"(i) The following shall be known as closed runs: *Wayfreight* and mixed runs, assigned work trains, pilots assigned to helper engines, also passenger runs that are located away from division terminals, regular runs on the G. H. & H. and any other runs located away from a district terminal, *and shall be advertised for a period of ten (10) days.*" (page 39) (Our italics)

• • • • • • •

[fol. 588] Freight Service Rulings
(Appendix to BRT and ORC&B Agreement)

• • • • • • •

"(h) When closed runs are thrown open for advertisement due to changed conditions, etc., the regular conductor and brakeman holding such run at that time will be permitted to hold run during advertisement.

"(i) It is agreed that when a terminal is changed for a closed run or a run changed from day to night, such run will be advertised."

"Article 34"

"Conductors and Trainmen in pool freight and in unassigned service held at other than home terminal will be paid on the minute basis for the actual time so held after the expiration of sixteen hours from the time relieved from previous duty at a rate per hour of 1/8th of the daily rate paid them for the last service performed. If held sixteen hours after the expiration of the first twenty-four hour period from the time relieved, they will be paid for the actual time so held during the next succeeding eight hours, or until the end of the second twenty-four hour period, and similarly for each twenty-four hour period thereafter.

"Should a Conductor or Trainman be called for service or ordered to deadhead after pay begins, held away from home terminal time shall cease at the time pay begins for such service or deadheading.

"Payments accruing under this rule shall be paid for separate and apart from pay for the subsequent service or deadheading.

"For the purpose of applying this rule *the railroad will designate a home terminal* for each crew in pool freight and in unassigned service." (page 30) (Our italics)

(14) On October 7, 1958, representatives of said Brotherhoods and Order requested the Railroad Companies to cancel said General Order No. 119 and said General Order No.

120 and on the same date said Railroad Companies denied such request.

(15) On October 14, 1958, the Executive Secretary of the National Mediation Board advised said Railroad Companies that said Brotherhoods and Order had requested the services of the Board "in dispute with MKT Railroad over abolishing established terminals and changing intradivisional service contrary to provisions of Article 4 of BLE, BLF&E, and ORC&B May 23, 1952 and Article 6 May 25, 1951 National Agreements." Said agreements are more fully described in paragraph IX of the complaint of said Railroad Companies in said Civil Action No. 8061.

(16) On October 20, 1958, the Executive Secretary of the National Mediation Board advised said Railroad Companies and representatives of said Brotherhoods and Order that said application of said Brotherhoods and Order for [fol. 589] the services of the Board had been given the Board's file C-2827 and that one of the Board's mediators then in Dallas, Texas, would commence an investigation on October 21, 1958, and that the Board "suggests carrier defer contemplated changes pending such immediate investigation." At that time, said changes had already been made pursuant to and in accordance with said Railroad Companies' General Orders Nos. 119 and 120 which became effective at 12.01 A.M. on October 19, 1958.

(17) On November 5, 1958, after investigation by said mediator, the Executive Secretary of the National Mediation Board advised said Railroad Companies and representatives of said Brotherhoods and Order as follows:

> "Re file C-2827 Missouri-Kansas-Texas Railroad and BLE, BLF&E, ORC&B and BRT concerning carrier's action in abolishing terminal and changing various runs. On basis of mediator's investigation and in view of fact this dispute appears identical with that covered by our case E-56 handled in 1956, National Mediation Board is of opinion that the dispute is not one subject to docketing and mediation under the Act. All concerned are therefore notified that file C-2827 is being closed as of this date."

Without notice to said Railroad Companies, a strike of their engineers, firemen, conductors, brakemen, and switchmen was called by said Brotherhoods and Order and became effective at 6.00 o'clock A.M. on November 6, 1958, but was stopped, as hereinabove stated, by a temporary restraining order issued on said date by said District Court.

(18) Said Case E-56 originated on August 27, 1956, in a strike called for 12.01 A.M. on September 1, 1956, by The Brotherhood of Railroad Trainmen, The Brotherhood of Locomotive Firemen and Enginemen, and The Order of Railway Conductors and Brakemen. At the request of the Board, and during mediation proceedings, said Brotherhoods and Order agreed to withdraw said strike date and said Railroad Companies agreed to maintain the status quo.

(19) On October 22, 1956, after unsuccessful mediation efforts, the National Mediation Board closed its file in Case E-56.

[fol. 590] (20) Said Case E-56 involved the same controversy as that involved in file C-2394 of the National Mediation Board which was commenced on August 11, 1955, when The Brotherhood of Locomotive Engineers, The Brotherhood of Locomotive Firemen and Enginemen, The Brotherhood of Railroad Trainmen, and The Order of Railway Conductors and Brakemen, requested the Board to take jurisdiction. At the request of the Board, said Railroad Companies deferred the proposed changes.

(21) On February 10, 1956, after investigation by a mediator of the Board, the Executive Secretary of the National Mediation Board by telegram advised said Railroad Companies and representatives of said Brotherhoods and Order with respect to the dispute involved in the Board's file C-2394 as follows:

> "Investigation of this file indicates that carrier has complied with Article 10(f) in Conductors and Brakemen's agreement and Article 34 of Engineers' agreement by serving notice required under those articles of change in assignment. Investigation further indicates that no formal notices have been served by

either party on the other for change in agreement on this subject. Section 2 Seventh and Section 6 of RLA (Railway Labor Act) apply only in situations where notices of changes are served by either party on the other in rates, rules or working conditions as covered by agreements. In absence of such notices this Board fails to find any basis for docketing application for mediation filed by the four organizations."

And, in response to an inquiry from the President of The Brotherhood of Locomotive Firemen and Enginemen with respect to said advice of February 10, 1956, the Executive Secretary of the National Mediation Board by letter dated February 29, 1956, advised the President of said Brotherhood as follows:

"You state that some question has arisen regarding the authority of this Board to determine whether or not the carrier 'has complied with Article 10 (f) of the Conductors' and Brakemen's Agreement and Article 34 of the Engineers' Agreement by serving notice required under these Articles of change in assignment.'

"Our telegram of February 10, 1956 stated only that the Mediator's investigation of this file indicates that the carrier had complied with those articles by the serving of required notices. The question of proper interpretation or application of those articles to the controversy was not touched upon.

"The National Mediation Board has no power under the Railway Labor Act to interpret the provisions of working agreements nor make any determination regarding compliance or non-compliance with such agreements in any particular situation. Such determina- [fol. 591] tions can, of course, be made only by the National Railway Adjustment Board.

"Our telegram was intended to direct attention to the fact that in the absence of notices served by either party on the other for changes in rates, rules or working conditions, no basis exists under Section 2, Seventh, or Section 6 of the Railway Labor Act on which the application filed by the three organizations could be

docketed. Any questions involving the proper interpretation or application of agreement rules would come under the jurisdiction of the National Railway Adjustment Board."

(22) Neither the Railroad Companies nor the appellees, or any of them, have served any notice on the other of any intended change in any agreement affecting rates of pay, rules or working conditions of said Railroad Companies' conductors, brakemen, switchmen, engineers or firemen.

(23) Said Brotherhoods and Order now contend that said Railroad Companies, in making said changes on October 19, 1958, pursuant to their General Orders Nos. 119 and 120—

Violated Articles 34 and 52 of the agreement effective October 1, 1918, as amended, between said Railroad Companies and The Brotherhood of Locomotive Engineers;

Violated Articles 10, 11, 59 and 60 of the agreement effective November 1, 1929, as amended and revised between said Railroad Companies, The Brotherhood of Railroad Trainmen, and The Order of Railway Conductors and Brakemen;

Violated Article 6 of a National Agreement dated May 23, 1952, between The Order of Railway Conductors (now The Order of Railway Conductors and Brakemen), and representatives of numerous railroad companies, including said Railroad Companies;

Violated Article 4 of a National Agreement dated May 23, 1952, between the Brotherhood of Locomotive Engineers and representatives of numerous railroad companies, including said Railroad Companies;

Violated Article 4 of a National Agreement dated May 23, 1952, between The Brotherhood of Locomotive Firemen and Enginemen, and representatives of numerous railroad companies, including said Railroad Companies;

Violated Article VIII (b) of Mediation Agreement Case No. A-5464 dated July 18, 1957, between The Brotherhood of Locomotive Engineers and representatives of numerous railroad companies, including said Railroad Companies;

Violated Article VIII (b) of Mediation Agreement Case No. A-5241 dated November 20, 1956, between The Brotherhood of Locomotive Firemen and Enginemen and representatives of numerous railroad companies, including said Railroad Companies;

Violated Article VIII (b) of Mediation Agreement Case No. A-5248 dated April 5, 1957, between The Brotherhood of Railroad Trainmen and representatives of numerous railroad companies, including said Railroad Companies;

[fol. 592] Violated Article V (b) of Mediation Agreement Case No. A-5294 dated June 12, 1957, between The Order of Railway Conductors and Brakemen and representatives of numerous railroad companies, including said Railroad Companies.

(24) Article 6 of the National Agreement dated May 23, 1952, between The Order of Railway Conductors (now The Order of Railway Conductors and Brakemen) and representatives of numerous railroad companies, became an agreement on August 1, 1952 between said Order and Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, but said agreement was cancelled in the year 1954 when said Order and said Railroad Companies agreed upon a reprint of their agreements and agreed (1) not to reproduce the provisions of Article 6 of said National Agreement dated May 23, 1952, (2) that said provisions were rejected, and (3) that existing rules or practices were preserved. This is clearly shown by correspondence between the parties and by the 1954 revision of the appendix to the agreement between said Railroad Companies, The Brotherhood of Railroad Trainmen, and The Order of Railway Conductors (now The Order of Railway Conductors and Brakemen), viz:

Letter dated March 1, 1954, addressed by C. L. Flanery to A. F. Winkel, asking for a conference during the week of March 22, 1954, concerning a revision of said agreement.

Letter dated March 4, 1954, addressed by A. F. Winkel to W. D. Johnson and C. L. Flanery, setting a conference for 10:00 A.M., on March 25, 1954, with respect to a revision of said agreement.

Letter dated September 17, 1954, addressed by A. F. Winkel to W. D. Johnson and C. L. Flanery, enclosing to each of them thirty printer's galley proofs of said revised agreement and appendix, including revisions agreed upon between representatives of the parties in conference;

Letter dated November 15, 1954, addressed by C. L. Flanery to A. F. Winkel, acknowledging A. F. Winkel's letter of September 17 and enclosure, indicating some changes which should be made on the galley proofs (but none affecting Article 6 of said National Agreement dated May 23, 1952), and stating that C. L. Flanery was agreeable to printing at the earliest possible time;

Letter dated November 16, 1954, addressed by W. D. Johnson to A. F. Winkel, acknowledging A. F. Winkel's letter of September 17 and enclosure, and indicating an addition which should be made to Article 44 of said agreement; and

[fol. 593] Letter dated December 29, 1954, addressed by W. D. Johnson to A. F. Winkel, agreeing to A. F. Winkel's suggested revision of the note to Article 44 of said agreement and stating "it will be agreeable to reprint the schedule in that manner".

Copies of said letter marked Exhibits Nos. 5 to 10, respectively, are attached to and made a part of this motion.

(25) On galley proofs 17 to 19, inclusive, attached to said letter of A. F. Winkel dated September 17, 1954, there was reproduced those portions of said National Agreement dated May 23, 1952, which remained agreements between the Railroad Companies and The Order of Railway Con-

ductors, and on such proofs appropriate references were made to those portions of said National Agreement which were no longer agreements between said Railroad Companies and The Order of Railway Conductors. On galley proof 18, the following appears:

"Article 6

Interdivisional, Interseniority District, Intradivisional, and/or Intraseniority District Service (Freight or Passenger)

(Not reproduced—Rejected and existing rules or practices preserved.)"

This identical language now appears on page 76 of the appendix to the said agreement as revised to April 1, 1954.

(26) Said Railroad Companies have submitted this entire controversy, including all claims of said Brotherhoods and Order, to the National Railroad Adjustment Board, First Division.

(27) Said Railroad Companies have submitted to the National Committee created by Article 4 of the National Agreement dated May 23, 1952, between railroads represented by the Eastern, Western and Southeastern Carriers' Conference Committees and engineers, firemen, hostlers and hostler helpers of such carriers represented by The Brotherhood of Locomotive Engineers, the claim of said Brotherhood that said Railroad Companies violated the provisions of Article 4 of said National Agreement of May 23, 1952, when said Railroad Companies on October 19, 1958, rearranged way freight service between North Yard (Wichita Falls, Texas) and Forgan, Oklahoma, pursuant to and in accordance with said Railroad Companies' Gen- [fol. 594] eral Order No. 119 dated October 2, 1958, and when said Railroad Companies on October 19, 1958, abolished Altus, Oklahoma, and Woodward, Oklahoma, as away-from-home terminals for unassigned crews in through freight service, established Elk City, Oklahoma, as an away-from-home terminal and continued Forgan, Oklahoma, as an away-from-home terminal for such crews pursuant to and in accordance with said Railroad Companies' General Order No. 120 dated October 2, 1958.

(28) Said Railroad Companies have submitted to the National Committee created by Article 4 of the National Agreement dated May 23, 1952, between railroads represented by the Eastern, Western and Southeastern Carriers' Conference Committees and firemen, engineers, hostlers and hostler helpers of such carriers represented by The Brotherhood of Locomotive Firemen and Enginemen, the claim of said Brotherhood that said Railroad Companies violated the provisions of Article 4 of said National Agreement of May 23, 1952, when said Railroad Companies made said changes pursuant to their General Orders Nos. 119 and 120.

(29) Said Railroad Companies have submitted to the National Committee created by Article 6 of the National Agreement dated May 23, 1952, between railroads represented by the Eastern, Western and Southeastern Carriers' Conference Committee and conductors, trainmen and yardmen of such carriers represented by The Order of Railway Conductors and Brakemen, the claim of said Order that said Railroad Companies violated the provisions of Article 6 of said National Agreement of May 23, 1952, when said Railroad Companies made said changes pursuant to their General Orders Nos. 119 and 120, but said submission was made subject to the position of said Railroad Companies that the provisions of said Article 6 did not constitute an agreement between said Order and said Railroad Companies on October 19, 1958, and that said provisions do not now constitute an agreement between those parties.

(30) Said Railroad Companies have submitted to the Disputes Committee created by Article X of Mediation Agreement Case No. A-5241 dated November 20, 1956, between railroads represented by the Eastern, Western and Southeastern Carriers' Conference Committees and the [fol. 595] employees of such carriers represented by The Brotherhood of Locomotive Firemen and Enginemen, the claim of said Brotherhood that said Railroad Companies violated the provisions of Article VIII (b) of said Mediation Agreement Case No. A-5241, when said Railroad Com-

panies made said changes pursuant to their General Orders Nos. 119 and 120.

(31) Said Railroad Companies have submitted to the Disputes Committee created by Article X of Mediation Agreement Case No. A-5248 dated April 5, 1957, between railroads represented by the Eastern, Western and Southeastern Carriers' Conference Committee and the employees of such carriers represented by The Brotherhood of Railroad Trainmen, the claim of said Brotherhood that said Railroad Companies violated the provisions of Article VIII (b) of said Mediation Agreement Case No. A-5248 when said Railroad Companies made said changes pursuant to their General Orders Nos. 119 and 120.

(32) Said Railroad Companies have submitted to the Disputes Committee created by Article X of Mediation Agreement Case No. A-5464 dated July 18, 1957, between railroads represented by the Eastern, Western and Southeastern Carriers' Conference Committees and the employees of such carriers represented by The Brotherhood of Locomotive Engineers, the claim of said Brotherhood that said Railroad Companies violated the provisions of Article VIII (b) of said Mediation Agreement Case No. A-5464, when said Railroad Companies made said changes pursuant to their General Orders Nos. 119 and 120.

(33) Said Railroad Companies have submitted to the Disputes Committee created by Article VII of Mediation Agreement Case No. A-5294 dated June 12, 1957, between railroads represented by the Eastern, Western and Southeastern Carriers' Conference Committees and the employees of such carriers represented by The Order of Railway Conductors and Brakemen, the claim of said Order that said Railroad Companies violated the provisions of Article V (b) of said Mediation Agreement Case No. A-5294, when said Railroad Companies made said changes pursuant to their General Orders Nos. 119 and 120.

[fol. 596] (34) Said Railroad Companies have submitted to the National Mediation Board the claims of said Brotherhoods and Order that said Railroad Companies violated the provisions of Article VIII (b) of said Media-

tion Agreement Case No. A-5241 dated November 20, 1956, the provisions of Article VIII (b) of said Mediation Agreement Case No. A-5248 dated April 5, 1957, the provisions of Article VIII (b) of said Mediation Agreement Case No. A-5464 dated July 18, 1957, and the provisions of Article V (b) of said Mediation Agreement Case No. A-5294 dated June 12, 1957, when said Railroad Companies made said changes pursuant to their General Orders Nos. 119 and 120.

(35) Said Railroad Companies have submitted to the National Mediation Board the claims of The Brotherhood of Locomotive Engineers, The Brotherhood of Locomotive Firemen and Enginemen, and The Order of Railway Conductors and Brakemen, that said Railroad Companies violated the provisions of Article 4 of said National Agreement of May 23, 1952, with The Brotherhood of Locomotive Engineers, the provisions of Article 4 of said National Agreement of May 23, with The Brotherhood of Locomotive Firemen and Enginemen, and the provisions of Article 6 of said National Agreement of May 23, 1952, with The Order of Railway Conductors (now The Order of Railway Conductors and Brakemen) when said Railroad Companies made said changes pursuant to their General Orders Nos. 119 and 120, but said submission with respect to the provisions of Article 6 of said National Agreement of May 23, 1952, with The Order of Railway Conductors (now The Order of Railway Conductors and Brakemen) was made subject to the position of said Railroad Companies that the provisions of Article 6 did not constitute an agreement between said Order and said Railroad Companies on October 19, 1958, and that said provisions do not now constitute an agreement between those parties.

(36) Copies of said submissions, marked Exhibits A to J, respectively, are attached to and made a part of the Railroad Companies' amendment and supplement to their original complaint, as supplemented.

Wherefore, appellants pray for an order staying enforcement of said part of said order and for such other and [fol. 597] further relief to which appellants may be entitled.

Dated January 5, 1959.

W. A. Thie; M. E. Clinton; M. W. Reeves, Barrett Building, Denison, Texas;

O. O. Touchstone, 405 Southland Life Bldg., Dallas 1, Texas,

Attorneys for Appellants.

[fol. 598] EXHIBIT NO. 1 TO MOTION

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

No. 8061—Civil

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, ET AL.,
Plaintiffs

VS.

THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS, ET AL.,
Defendants

ORDER

On December 18, 1958, the above cause came on to be heard. Came plaintiffs, and came defendants. The Court heard the Motion to Dismiss the Complaint and to Dissolve the Temporary Restraining Order herein, and the argument and statements of counsel upon the pleading as a whole. *The Court is of the opinion* that this matter should be held in abeyance pending efforts of the parties to agree upon arbitration looking toward final settlement of the dispute and controversy between plaintiffs and defendants and, in the event the parties are not able to agree upon such arbitration, then until decisions on the various submissions of the controversy made by the plaintiffs, as set out in the complaint, as amended, shall have been rendered by the agencies to which such submissions have been made, and is further of the opinion that, *pending settlement of*

the controversy as a result of the arbitration looking to settlement, or determination of the controversy by decisions in the submissions, as aforesaid, plaintiffs should restore the conditions affected by plaintiffs' General Orders 119 and 120, referred to in the complaint, as amended, to the conditions which existed prior to the effective date of such orders, and maintain such conditions during such period, or make the payments hereinafter specified, and that defendants and the employees of plaintiffs represented by defendants should not strike on account of the dispute and controversy between plaintiffs and defendants herein

It Is, Therefore, Ordered that this cause be continued and held in abeyance *until the controversy between plaintiffs and defendants herein shall have been settled by and between the parties, or until decisions on the various submissions made by plaintiffs, as set out in the complaint,* [fol. 598b] *as amended, have been rendered, and that during such period plaintiffs restore the conditions which were affected by their General Orders 119 and 120, referred to in the complaint, as amended, to the conditions which existed before such orders became effective, and maintain such restored conditions during such period. In the alternative if the plaintiffs do not elect to restore and maintain the conditions as ordered aforesaid, then until the matters have been finally determined in the boards hereinabove mentioned, the plaintiffs will pay to the employees of the plaintiffs affected adversely by plaintiffs' General Orders 119 and 120 the same amounts of money that they would have paid had the changes made by plaintiffs' General Orders 119 and 120 not been made.*

In any controversy as to what this pay may be, it may be determined by the average annual wage earned by such employee or employees in the affected service during 1957 adjusted for wage increases put into effect subsequent to January 1, 1958. Any amount payable under this order shall be reduced by the amount which is payable by plaintiffs to the Railroad Retirement Board for unemployment compensation received by such employee. It is further ordered that the defendants and employees of plaintiffs represented by defendants be and they are hereby en-

joined from striking during such period on account of the controversy and dispute involved herein between plaintiffs and defendants.

It is further ordered that the present bond on file herein shall be continued in effect as the injunction bond. (Our italics)

Dated at Dallas, Texas, this 18th day of December, 1958.

(Sgd) T. Whitfield Davidson
United States District Judge

APPROVED AS TO FORM:

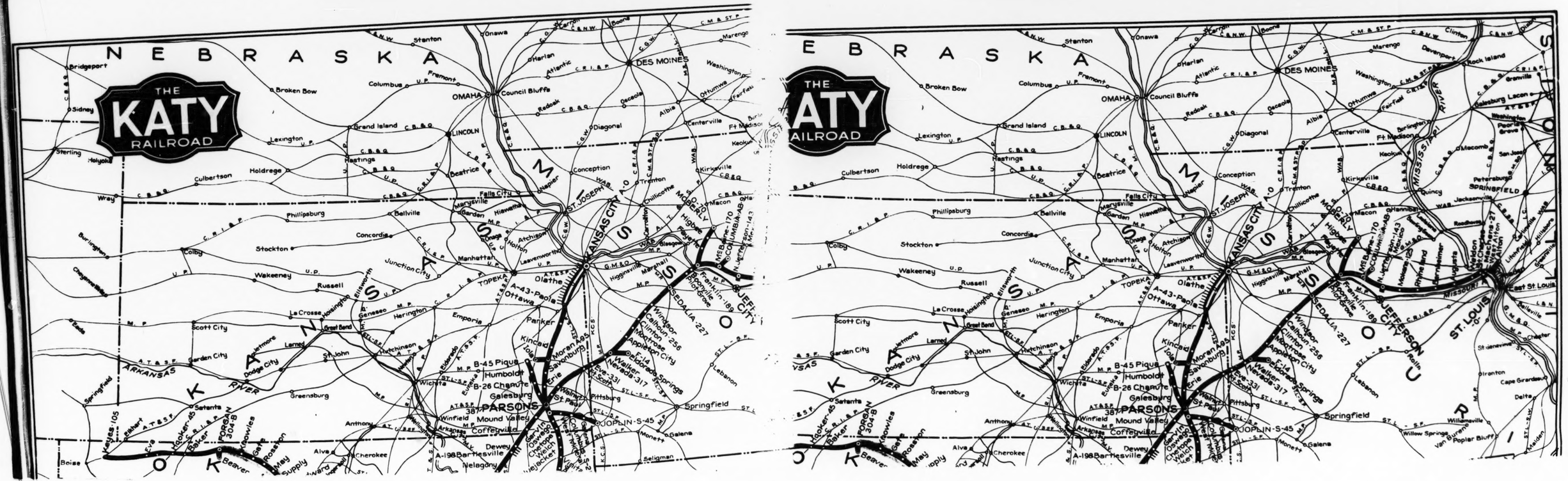
(Sgd) O. O. Touchstone
Attorney for Plaintiffs

(Sgd) William P. Fonvilie
Attorney for Defendants

[fol. 599] EXHIBIT No. 2

The Katy Railroad Map, showing Missouri-Kansas-Texas Lines, with line of RR between Wichita Falls and Forgan marked in December, 1958.

(See Opposite) ☞


THE KATY RAILROAD
THE ATY AILROAD
NEBRASKA
KANSAS
OKLAHOMA
MISSOURI
ILLINOIS
OMAHA
Council Bluffs
LINCOLN
DES MOINES
ST. JOSEPH
KANSAS CITY
TOPEKA
PARSONS
JOPLIN
SPRINGFIELD
ST. LOUIS
JEFFERSON CITY
COLUMBIA
MEXICO
MOBERLY
SEDALIA
Grand Island
Hastings
Beatrice
Fairbury
Falls City
Marysville
Hiawatha
Atchison
Leavenworth
Lexington
Holdrege
Culbertson
Bridgeport
Sidney
Sterling
Holyoke
Wray
Burlington
Colby
Stockton
Phillipsburg
Concordia
Ellsworth
Wakeeney
Russell
Junction City
Manhattan
Olathe
Ottawa
Parker
Kincaid
Iola
Moran
Savonburg
Erie
Chanute
Galesburg
Humboldt
Piqua
Fredonia
Coffeyville
Independence
Cherryvale
Dewey
Bartlesville
Nelagony
Winfield
Arkansas City
Ponca City
Blackwell
Enid
Alva
Cherokee
Anthony
Harper
Caldwell
Wellington
Kingman
Hutchinson
Newton
Emporia
Herington
Abilene
Salina
Minneapolis
Concordia
Clyde
Clay Center
Manhattan
Junction City
Fort Riley
Wamego
Topeka
Lawrence
Ottawa
Garnett
Iola
Chanute
Parsons
Oswego
Cherryvale
Coffeyville
Independence
Sedan
Caney
Dewey
Bartlesville
Nowata
Coffeyville
Chanute
Iola
Garnett
Ottawa
Lawrence
Topeka
Wamego
Fort Riley
Junction City
Manhattan
Clay Center
Clyde
Concordia
Minneapolis
Salina
Abilene
Herington
Emporia
Newton
Hutchinson
Kingman
Caldwell
Wellington
Harper
Anthony
Cherokee
Alva
Enid
Blackwell
Ponca City
Arkansas City
Winfield
Dewey
Bartlesville
Nelagony
Coffeyville
Independence
Cherryvale
Fredonia
Piqua
Humboldt
Galesburg

[fol. 600] EXHIBITS 3 AND 4

Omitted. Printed side folios 91 and 92, pages 80 and 81, supra. Same as Exhibits 2 and 3 to Affidavit.

[fol. 602] EXHIBIT 5

Omitted. Printed side folio 93, page 82, supra. Same as Exhibit 4 to Affidavit.

[fol. 603] EXHIBIT 6

Omitted. Printed side folio 94, page 83, supra. Same as Exhibit 5 to Affidavit.

[fol. 604] EXHIBIT 7

Omitted. Printed side folio 95, page 84, supra. Same as Exhibit 6 to Affidavit.

[fol. 605] EXHIBIT 8

Omitted. Printed side folio 96, page 85, supra. Same as Exhibit 7 to Affidavit.

[fol. 606] EXHIBIT 9

Omitted. Printed side folio 97, page 86, supra. Same as Exhibit 8 to Affidavit.

[fol. 607] EXHIBIT 10

Omitted. Printed side folio 98, page 87, supra. Same as Exhibit 9 to Affidavit.

[fol. 610] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 17580

[Title omitted]

AFFIDAVIT OF A. F. WINKEL—Filed January 6, 1959

The State of Texas
County of Dallas

Before me, the undersigned authority, on this day personally appeared A. F. Winkel who, after being by me first duly sworn, deposes and says that he is Vice President—Personnel of Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, appellants in the above styled cause; that he has read appellants' motion for a stay order in said cause and knows the contents thereof; that the facts therein stated are true, except the facts stated therein on information and belief which he believes to be true, and except as of the date of this affidavit, the District Court has not acted upon appellants' motion for a stay order in Civil Action No. 8061 entitled "Missouri-Kansas-Texas Railroad Company, et al., vs. The Brotherhood of Locomotive Engineers, et al.," in the District Court of the United States for the Northern District of Texas, Dallas Division.

A. F. Winkel

Subscribed and sworn to before me this 3rd day of January, 1959.

W. B. Lowe, Jr., Notary Public, Dallas County, Texas.

[fol. 611] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 17580

[Title omitted]

AFFIDAVIT OF M. E. CLINTON—Filed January 6, 1959

State of Louisiana
Parish of Orleans

Before me, the undersigned authority, on this day, personally appeared M. E. Clinton who, after being by me first duly sworn, deposes and says that he is one of the attorneys of record for Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, appellants in the above styled cause and plaintiffs in Civil Action No. 8061, entitled "Missouri-Kansas-Texas Railroad Company, et al, Vs. The Brotherhood of Locomotive Engineers, et al," in the District Court of the United States for the Northern District of Texas, Dallas Division; that said District Court on the 5th day of January, 1959, entered an order denying appellants' motion for an order staying enforcements of the injunction against appellants contained in the order of said District Court, dated December 18, 1958.

M. E. Clinton

Subscribed and sworn to before me, this 5 day of January, 1959.

M. Truman Woodward, Jr., Notary Public, Parish of Orleans, Louisiana.

[fol. 612]

IN UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 17580

[Title omitted]

AFFIDAVIT OF M. E. CLINTON AS TO FILING NOTICE OF APPEAL WITH COPY OF NOTICE ATTACHED—Filed January 6, 1959

Before me, the undersigned authority, on this day, personally appeared M. E. Clinton who, after being by me first duly sworn, deposes and says that he is one of the attorneys of record for Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, appellants in the above styled cause and plaintiffs in Civil Action No. 8061, entitled "Missouri-Kansas-Texas Railroad Company, et al, Vs. The Brotherhood of Locomotive Engineers, et al," in the District Court of the United States for the Northern District of Texas, Dallas Division; that Exhibit A attached hereto and made a part hereof is a true and correct copy of the notice of appeal filed by appellants in said cause No. 8061 on December 29, 1958; and that appellants filed in said cause No. 8061 on December 29, 1958, a cost bond on appeal in the sum of Two Hundred Fifty Dollars ($250.00).

M. E. Clinton

Subscribed and sworn to before me, this 5 day of January, 1959.

M. Truman Woodward, Jr., Notary Public, Parish of Orleans, Louisiana.

(Seal)

[fol. 613]

EXHIBIT A TO NOTICE OF APPEAL

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Civil Action No. 8061

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, et al., Plaintiffs,

vs.

THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS, et al., Defendants.

NOTICE OF APPEAL

Notice is hereby given that Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, plaintiffs in the above entitled Civil Action No. 8061, hereby appeal to the United States Court of Appeals for the Fifth Circuit from that portion of the order entered in said action on December 18, 1958, by the District Court of the United States for the Northern District of Texas, Dallas Division, which reads as follows:

"The Court is of the opinion * * * that, pending settlement of the controversy as a result of the arbitration looking to settlement, or determination of the controversy by decisions in the submissions, as aforesaid, plaintiffs should restore the conditions affected by plaintiffs' General Orders 119 and 120, referred to in the complaint, as amended, to the conditions which existed prior to the effective date of such orders, and maintain such conditions during such period or make the payments hereinafter specified * * *."

"IT IS, THEREFORE, ORDERED that * * * until the controversy between plaintiffs and defendants herein shall have been settled by and between the parties, or until decisions on the various submissions made by plaintiffs, as set out in the complaint, as amended, have been rendered, and that during such period plaintiffs restore the conditions which were affected by their General Orders 119 and 120, referred to in the complaint,

as amended, to the conditions which existed before such orders became effective, and maintain such restored conditions during such period. In the alternative if the plaintiffs do not elect to restore and maintain the conditions as ordered aforesaid, then until the matters have been finally determined in the boards hereinabove mentioned, the plaintiffs will pay to the employees of the plaintiffs affected adversely by plaintiffs' General Orders 119 and 120 the same amounts of money that they would have paid had the changes made by plaintiffs' General Orders 119 and 120 not been made.

[fol. 614] "In any controversy as to what this pay may be, it may be determined by the average annual wage earned by such employee or employees in the affected service during 1957 adjusted for wage increases put into effect subsequent to January 1, 1958. Any amount payable under this order shall be reduced by the amount which is payable by plaintiffs to the Railroad Retirement Board for unemployment compensation received by such employees."

Dated December 24, 1958.

/s/ W. A. THIE
W. A. Thie

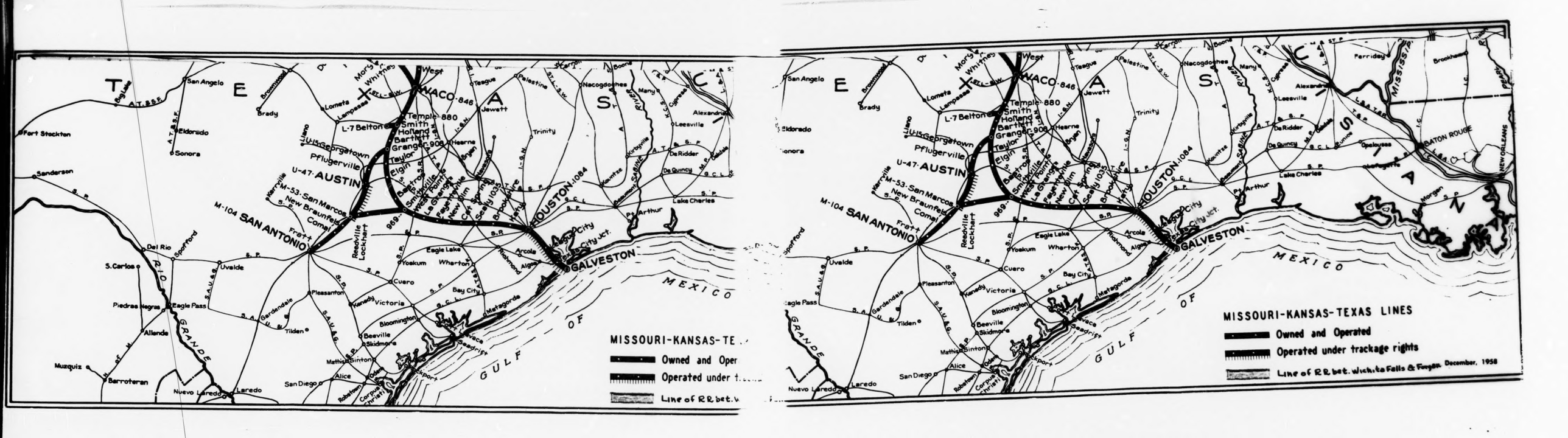
/s/ M. E. CLINTON
M. E. Clinton

/s/ M. W. REEVES
M. W. Reeves
Barrett Building
Denison, Texas

/s/ O. O. TOUCHSTONE
O. O. Touchstone
405 Southland Life Building
Dallas 1, Texas

Attorneys for Appellants
Missouri-Kansas-Texas
Railroad Company and
Missouri-Kansas-Texas
Railroad Company of Texas

OKLAHOMA
ARKANSAS
LOUISIANA
TEXAS
OKLAHOMA CITY
TULSA
MUSKOGEE
LITTLE ROCK
FT. SMITH
WICHITA FALLS
DENISON
DURANT
ATOKA
MCALESTER
GREENVILLE
FT. WORTH
DALLAS
SHREVEPORT
JACKSON
RED RIVER
SOUTH CANADIAN RIVER
ARKANSAS RIVER
Woodward
Enid
Guthrie
Cushing
Yale
Sand Springs
Broken Arrow
Coweta
Porter
Wagoner
Chouteau
Pryor
Chelsea
Claremore
Nelagony
Wynona
Hominy
Bluejacket
Seligman
Fayetteville
Van Buren
Russellville
Searcy
Batesville
Newport
Hoxie
Harrisburg
Jonesboro
Osceola
Wynne
Forrest City
Brinkley
Stuttgart
Dermott
Lake Village
Greenwood
Lexington
Rolling Fork
Vicksburg
Port Gibson
Winnfield
Monroe
Ruston
Tyler
Longview
Carthage
Tenaha
Jacksonville
Corsicana
Italy
Waxahachie
Cleburne
Rockwall
Garland
Lancaster
Grandview
Alvarado
Burleson
Itasca
Hillsboro
Mineola
Alba
Paddo
Mabank
Kerens
Corsicana
Athens
Palestine
Jacksonville
Nacogdoches
Lufkin
Beaumont
Port Arthur
Orange
Houston
Galveston
Texarkana
Lewisville
Hope
Ashdown
Malvern
Hot Springs
Camden
Eldorado
Arkansas City
Tallulah
Greenville
Yazoo City
Meridian
Laurel
Hattiesburg
McComb
Natchez
Vicksburg
Clarksdale
Memphis
Tupelo
Corinth
Iuka
Florence
Sheffield
Tuscumbia
Decatur
Huntsville
Gadsden
Anniston
Birmingham
Tuscaloosa
Selma
Montgomery
Dothan
Eufaula
Ozark
Fort Smith
Van Buren
Clarksville
Russellville
Conway
Little Rock
North Little Rock
Pine Bluff
Stuttgart
Dermott
Lake Village


MISSOURI-KANSAS-TEXAS LINES
Owned and Operated
Operated under trackage rights
Line of RR bet. Wichita Falls & Fingen, December, 1958
WACO-846
HOUSTON-1084
GALVESTON
SAN ANTONIO
AUSTIN
MEXICO
GULF OF

[fol. 615] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 17580

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, et al.,
Appellants,

vs.

THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS, et al.,
Appellees.

STAY ORDER—January 6, 1959

Before Tuttle, Jones and Brown, Circuit Judges.

On this 6 day of January, 1959, there was presented to me the motion of Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, appellants in the above entitled and numbered cause, for an order staying during the pending of their appeal, the enforcement of the following part of the order entered December 18, 1958, by the District Court of the United States for the Northern District of Texas, Dallas Division, in Civil Action No. 8061, entitled "Missouri-Kansas-Texas Railroad Company, et al., Plaintiffs, vs. The Brotherhood of Locomotive Engineers, et al., Defendants", to-wit:

> "The Court is of the opinion * * * that, pending settlement of the controversy as a result of the arbitration looking to settlement, or determination of the controversy by decisions in the submissions, as aforesaid, plaintiffs should restore the conditions affected by plaintiffs' General Orders 119 and 120, referred to in the complaint, as amended, to the conditions which existed prior to the effective date of such orders, and maintain such conditions during such period, or make the payments hereinafter specified * * *."
>
> "IT IS, THEREFORE, ORDERED that * * * until the controversy between plaintiffs and defendants herein shall

have been settled by and between the parties, or until decisions on the various submissions made by plaintiffs, as set out in the complaint, as amended, have been rendered, and that during such period plaintiffs restore the conditions which were affected by their General Orders 119 and 120, referred to in the complaint, as amended, to the conditions which existed before such orders became effective, and maintain such restored conditions during such period. In the alternative if the plaintiffs do not elect to restore and maintain the conditions ordered aforesaid, then until the matters have been finally determined in the boards hereinabove mentioned, the plaintiffs will pay to the employees of the plaintiffs affected adversely by plaintiffs' General Orders 119 and 120 the same amounts of money that they would have paid had the changes made by plaintiffs' General Orders 119 and 120 not been made.

"In any controversy as to what this pay may be, it may be determined by the average annual wage earned by such employee or employees in the affected service during 1957 adjusted for wage increases put into effect subsequent to January 1, 1958. Any amount payable [fol. 616] under this order shall be reduced by the amount which is payable by plaintiffs to the Railroad Retirement Board for unemployment compensation received by such employees."

And it appearing that appellants have duly filed their notice of appeal from said part of said order to the United States Court of Appeals for the Fifth Circuit;

And it further appearing that the District Court of the United States for the Northern District of Texas, Dallas Division, which issued said order of December 18, 1958, has denied appellants' motion for an order staying the enforcement of said part of said order;

And it appearing that said stay should be granted;

It is Ordered that enforcement of said part of said order of December 18, 1958, be and the same hereby is stayed pending disposition of appellants' said appeal to the United

States Court of Appeals for the Fifth Circuit and the issuance of the mandate of that Court, or the further order of this Court upon the filing by appellants of a supersedeas bond in the sum of Dollars ($10,000.), approved by a Judge of said Court.

(Illegible) Judge of the United States Court of Appeals for the Fifth Circuit.

Enter: January 6, 1959.
EB
ALJ

[fol. 617] Supersedeas Bond—Filed January 6, 1959 (omitted in printing).

[fol. 623] Minute Entry of Argument and Submission—February 24, 1959 (omitted in printing).

[fol. 624]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 17580

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, et al.,
Appellants-Appellees,

versus

THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS, et al.,
Appellees-Appellants.

(and reverse title)

Appeals from the United States District Court
for the Northern District of Texas

OPINION—April 20, 1959

Before Rives, Jones and Wisdom, Circuit Judges.

Rives, Circuit Judge: At 6:00 o'clock A. M. on November 6, 1958, the engineers, firemen, conductors, brakemen and switchmen of appellant Railroad Companies struck and [fol. 625] ceased work. The strike was called without notice to the Railroad Companies by the four railroad labor organizations.[1] The strike stopped all train operations of the Railroad Companies over 2919 miles of track extending from St. Louis and Kansas City, Missouri, on the north to Oklahoma City, Oklahoma, and to Houston and San Antonio, Texas, on the south. The strike was halted on the same day by a temporary restraining order issued by the district court upon the application of the Railroad Companies.

---

[1] The Brotherhood of Locomotive Engineers, The Brotherhood of Locomotive Firemen and Enginemen, The Brotherhood of Railroad Trainmen, and The Order of Railway Conductors and Brakemen.

The strike had been precipitated by General Orders 119 and 120, issued October 2, 1958, by the Railroad Companies, effective at 12:01 A. M. on October 19, 1958. Those orders made certain changes in the intradivisional runs of freight trains and the away-from-home terminals for freight service between Wichita Falls, Texas, and Forgan, Oklahoma, a distance of 302 miles. Before the orders became effective, the National Mediation Board advised the Railroad Companies that the employees had invoked the services of that Board, but the Railroad Companies nonetheless placed the orders into effect as scheduled. About a month later, but prior to the hearing of their application for a preliminary injunction, the Railroad Companies undertook to submit the matters in dispute to the National Railroad Adjustment Board, and in part, to the National Mediation Board, and to Committees established by the collective bargaining agreements.

[fol. 626] On December 18, 1958, the district court granted a preliminary injunction enjoining the strike pending decisions by said Boards and Committees, and in the same order, directed the Railroad Companies to restore and maintain conditions affected by their General Orders 119 and 120 to the conditions which existed prior to the effective date of such orders or, on the election of the Companies, pay the employees adversely affected by such orders the same amounts they would have paid such employees had the changes made by such orders not been effected.

On December 29, 1958, the Railroad Companies filed notice of appeal from that part of the order requiring them to restore and maintain the status quo pending the injunction. On January 5, 1959, they sought from the district court a stay of that portion of the order. The court then ruled that the injunction had been granted on condition that the Railroad Companies restore and maintain the status quo, and denied the stay requested by them and entered an order so reciting. On January 6, 1959, the Railroad Companies obtained from this Court[2] a stay of

[2] The panel being composed of Circuit Judges Tuttle, Jones, and Brown.

that portion of the order dated December 18, 1958, requiring them to restore the status quo. On January 13, 1959, the Railroad Companies attempted to appeal from the district court's order of January 5, 1959.[3] On January 15, 1959, the defendant employees and labor organizations [fol. 627] appealed from that part of the order of December 18, 1958, granting a preliminary injunction against them. The 302-mile line over which this controversy arose constitutes a separate seniority district for the engineers, firemen, conductors, and brakemen.

Prior to October 19, 1958, way freight crews on this line were assigned as follows:

> Two crews between North Yard (Wichita Falls, Texas) and Welon (Altus, Oklahoma), a distance of 75.9 miles, daily except Sunday, with North Yard the home terminal for both crews, and with Sunday layover at North Yard for one crew and at Welon for the other crew;
>
> One crew from Welon (Altus, Oklahoma) to Elk City, Oklahoma, and return, a distance of 58.3 miles in each direction, daily except Saturday, with Welon the home terminal and with Saturday layover at Welon;
>
> One crew from Elk City, Oklahoma, to Guest (Woodward, Oklahoma), a distance of 84.8 miles, on Mondays, Wednesdays and Fridays, and from Guest to Elk City on Tuesdays, Thursdays and Saturdays, with Elk City the home terminal and with Sunday layover at Elk City; and
>
> One crew from Guest (Woodward, Oklahoma) to Forgan, Oklahoma, a distance of 83.2 miles, on Mondays, Wednesdays and Fridays, and from Forgan to Guest on Tuesdays, Thursdays and Saturdays, with Guest the home terminal and with Sunday layover at Guest.

---

[3] In view of our ruling on the appeal from the part of the order of December 18. 1958, requiring the restoration of the status quo, we find it unnecessary to rule upon the attempted appeal from the order of January 5, 1959.

[fol. 628] Such way freight assignments, or similar way freight assignments between North Yard (Wichita Falls, Texas) and Forgan, Oklahoma, have been in existence for more than twenty-five years.

Effective at 12:01 A. M. on October 19, 1958, the Railroad Companies rearranged assigned way freight service between North Yard (Wichita Falls, Texas) and Forgan, Oklahoma, as follows:

> Assigned two way freight crews to operate between North Yard (Wichita Falls, Texas) and Elk City, Oklahoma, a distance of 134.2 miles, daily except Sunday, with North Yard the home terminal of both crews, and with Sunday layover at North Yard for one crew and at Elk City for the other; and
>
> Assigned one way freight crew to operate from Elk City, Oklahoma to Forgan, Oklahoma a distance of 168 miles, on Mondays, Wednesdays and Fridays, and from Forgan to Elk City on Tuesdays, Thursdays and Saturdays, with Elk City the home terminal and with Sunday layover at Elk City.

This arrangement of way freight service was made in accordance with General Order No. 119.

Prior to October 19, 1958, North Yard (Wichita Falls, Texas) was the home terminal and Altus, Oklahoma, and Forgan, Oklahoma, were the bulletined away-from-home terminals for unassigned crews in through freight service between North Yard (Wichita Falls, Texas) and Forgan, [fol. 629] Oklahoma. Effective at 12:01 A. M. on October 19, 1958, the Railroad Companies abolished Altus, Oklahoma, and Woodward, Oklahoma, as away-from-home terminals for unassigned crews in through freight service, established Elk City, Oklahoma, as an away-from-home terminal for such crews, leaving North Yard (Wichita Falls, Texas) as the home terminal and Forgan, Oklahoma, as an away-from-home terminal for such crews. This change in away-from-home terminals was made in accordance with General Order No. 120.

In response to the district court's question as to "the number of men that were put out of employment by the

change," the counsel for the Railroad Companies replied, "There were ten."

While not so strongly urged,[4] the attacks of the defendants, cross-appellants, on the jurisdiction of the district court to grant the preliminary injunction are matters which cannot be waived and which we should consider at the outset. Indeed, we find the jurisdictional questions practically determinative of the appeal as well as of the cross-appeal.

No testimony of witnesses was heard in open court before the preliminary injunction was issued, nor did the district court make any findings of fact. Absent such testimony and findings, the defendants and cross-appel- [fol. 630] lants insist that Section 7 of the Norris-La Guardia Act, 29 U. S. C. A. §107, deprived the district court of jurisdiction. The pertinent provisions of that section are quoted in the margin.[5]

---

[4] The position of appellees and cross-appellants is thus stated in brief:

> ". . . . If the condition requiring the restoration of the status quo or the optional alternative payments be maintained in the order, the Employees are content to abide the determination of the various submissions made of the controversy by Carriers. Otherwise not."

[5] "No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as defined in this chapter, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

"(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will continue unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

"(b) That substantial and irreparable injury to complainant's property will follow;

"(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial or relief than will be inflicted upon defendants by the granting of relief;

The material facts were, however, admitted; that is, the strike, the matters in controversy (though not their legal effect), and the submissions by the Railroad Companies of the dispute to the National Railroad Adjustment Board and, in part, to the National Mediation Board and to the Committees established by agreement. Under such circumstance, the specific provisions of the Railway Labor Act, 45 U. S. C. A. §§151, et seq., take precedence over the more general provision of the Norris La Guardia Act. *Brotherhood of Railroad Trainmen, et al.* v. *Chicago River* [fol. 631] *& Indiana Railroad Company, et al.*, 1957, 353 U. S. 30, 42.

The Railway Labor Act creates the National Railroad Adjustment Board for the resolution of "minor grievances" in the event that the parties are unable to agree upon their settlement, that is compulsory arbitration in this limited field. It does not provide a process for a final decision of a "major dispute." *Brotherhood of Railroad Trainmen, et al.* v. *Chicago River & Indiana Railroad Company, et al., supra.* As footnote 24 to the opinion in that case observes:

> "The Norris-LaGuardia Act has been held to prevent the issuance of an injunction in a railway labor case involving a 'major dispute.' *Brotherhood of Railroad Trainmen* v. *Toledo, P. & W. R. Co.*, 321 U.S. 50." (353 U.S. at p. 42.)

The differences between major disputes which must still be settled through traditional processes of agreement and minor disputes which the National Railroad Adjustment Board has been empowered finally to resolve has been elaborately discussed in *Elgin, J. & E. R. Co.* v. *Burley*, 1945, 325 U.S. 711, 722, et seq., from which we quote briefly:

> "The first relates to disputes over the formation of collective agreements or efforts to secure them. They arise where there is no such agreement or where

---

"(d) That complainant has no adequate remedy at law; and

"(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection." 29 U.S.C.A. §107.

it is sought to change the terms of one, and therefore the issue is not whether an existing agreement controls the controversy. They look to the acquisition of rights for the future, not to assertion of rights [fol. 632] claimed to have vested in the past.

"The second class, however, contemplates the existence of a collective agreement already concluded or, at any rate, a situation in which no effort is made to bring about a formal change in terms or to create a new one. The dispute relates either to the meaning or proper application of a particular provision with reference to a specific situation or to an omitted case. In the latter event the claim is founded upon some incident of the employment relation, or asserted one, independent of those covered by the collective agreement, e.g., claims on account of personal injuries. In either case the claim is to rights accrued, not merely to have new ones created for the future." (325 U.S. at p. 723.)

In the present case, collective agreements were in effect between the Railroad Companies and each of the Brotherhoods. The Brotherhoods claim that those agreements provide for notice and negotiation concerning establishment of or changes in district runs or numbers of crews assigned to them, with resolution of differences by Committees or officials designated in the collective agreements, and with the right of either party to invoke the services of the National Mediation Board. Upon the theory that the changes effected by Orders 119 and 120 amount to changes in *agreements* affecting rates of pay, rules or working conditions, the Brotherhoods claim that the Railroad Companies have violated Section 6 of the Railway Labor Act, 45 U.S.C.A. §156, by not following the procedure therein prescribed. The Railroad Companies claim [fol. 633] that the existing agreements relate to establishment of service, not to changes or rearrangement of service long established, and that they have retained their powers of management to change terminals and rearrange runs when business or changed conditions justify.

Without intimating any view as to their validity, we think it clear that the respective *contentions* of the Rail-

road Companies and of the employees are based upon existing agreements; their *claims* are to rights accrued and not to have new rights created for the future. The dispute is thus a "minor" dispute, the resolution of which is committed to the National Railroad Adjustment Board. Primary jurisdiction of that Board cannot be defeated by the emphasis with which any party asserts that its position is clearly the only rightful one, nor would it be appropriate for this Court to discuss the relative merits of questions which must be decided by that Board.

We conclude that the district court had jurisdiction to grant the preliminary injunction against a strike in this labor dispute in order to protect the primary jurisdiction of the National Railroad Adjustment Board to resolve the dispute.

Turning now to the appeal of the Railroad Companies, we do not find it necessary to decide whether the order of which they complain was a preliminary mandatory injunction against them or simply a condition upon which they were granted a preliminary injunction against the [fol. 634] defendants. Whether injunction or condition, the order directed the Railroad Companies to restore and maintain conditions affected by their General Orders 119 and 120 to the conditions which existed prior to the effective date of such orders, or, at the election of the Companies, to pay the employees adversely affected by such orders the same amounts they would have paid such employees had the changes made by such orders not been effected. If we accept the premise, heretofore discussed and decided, that the dispute precipitated by General Orders 119 and 120 was a minor dispute, which the National Railroad Adjustment Board alone had jurisdiction to resolve, then it is clear that the district court could not pass any sort of preliminary judgment upon the merits of that dispute. That kind of jurisdiction denied to the district court by the provisions of the Railway Labor Act cannot be exercised under the guise of discretionary equity powers to impose reasonable conditions upon the grant of an injunction, of requiring the plaintiff Railroad Companies to come into equity with clean hands, or upon any other theory whatsoever. To hold otherwise would per-

mit the district court, in every case where either a railroad company or a labor organization seeks an injunction to protect the jurisdiction of the National Railroad Adjustment Board, to lift itself by its bootstraps into some kind of jurisdiction to pass preliminary judgment upon the merits of disputes committed to the exclusive jurisdiction of the Board.

That part of the judgment of the district court of December 18, 1958, requiring the restoration and mainte-[fol. 635] nance of the status quo or the optional alternative payments, is therefore vacated; and, as thus modified, said judgment is affirmed.

Modified and affirmed.

[fol. 636]

IN UNITED STATES COURT OF APPEALS

No. 17580

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, et al.,

versus

THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS, et al.,
(and reverse title)

JUDGMENT—April 20, 1959

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Texas, and was argued by counsel;

On Consideration Whereof, It is now here ordered and adjudged by this Court that that part of the judgment of the district court of December 18, 1958, requiring the restoration and maintenance of the status quo or the optional alternative payments, in this cause be, and the same is hereby, vacated; and, as thus modified, that judgment be, and it is hereby, affirmed;

It is further ordered and adjudged that appellees-appellant, The Brotherhood of Locomotive Engineers, and others, be condemned, in solido to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

[fol. 637]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17,580

[Title omitted]

MOTION FOR STAY OF MANDATE—Filed May 7, 1959

Come now Appellants and Cross-Appellees, The Brotherhood of Locomotive Engineers, The Brotherhood of Locomotive Firemen & Enginemen, The Brotherhood of Railroad Trainmen, and the Order of Railway Conductors & Brakemen, and move that this Court stay its mandate to the United States District Court for the Northern District of Texas on these appeals until disposition of this case by the Supreme Court of the United States.

The judgment of this Court in the above entitled case was rendered on April 20, 1959. Appellants will file a Petition for a Writ of Certiorari in the Supreme Court of the United States to review that judgment. It is, therefore, [fol. 638] requested that the mandate of this Court to the United States District Court for the Northern District of Texas in this case be stayed until the final disposition of this case by the Supreme Court of the United States.

Respectfully submitted,

Wayland K. Sullivan, 1370 Ontario Street, Cleveland 13, Ohio;

Harold C. Heiss, Keith Building, Cleveland 15, Ohio;

Clarence E. Weisell, 1706 Union Commerce Bldg., Cleveland 14, Ohio;

V. C. Shuttleworth, 1120 Merchants National Bank Building, Cedar Rapids, Iowa;

Willis & Willis, 1408 Tower Petroleum Building, Cedar Rapids, Iowa, By J. Hart Willis;

William P. Fonville, 2232 Republic National Bank Building, Dallas 1, Texas,

Attorneys for Appellants and Cross-Appellees, Brotherhood of Locomotive Engineers, et al.

[fol. 639] Certificate of service (omitted in printing).

[fol. 640]

IN UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17,580

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS, et al.,
Appellant,

versus

BROTHERHOOD OF LOCOMOTIVE ENGINEERS, et al.,
Appellee.

ORDER STAYING MANDATE—May 12, 1959

On Consideration of the Application of the Appellees in the above numbered and entitled cause for a stay of the mandate of this court therein, to enable Appellees to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, It Is Ordered that the issue of the mandate of this court in said cause be and the same is stayed for a period of thirty days; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from the date of this order there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that certiorari petition and record have been filed. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from the date of this order, unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

Done at New Orleans, La., this 12th day of May, 1959.

Richard T. Rives, United States Circuit Judge.

[fol. 641] Clerk's Certificate to foregoing transcript (omitted in printing).